

VICENTE R. MADARANG, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 112314. March 28, 2001

Ponente: MELO, J.

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MELO, J.:

This is one of the cases which, regrettably, was not acted upon with dispatch, especially so, in view of the submission by the Office of the Solicitor General of a manifestation recommending acquittal. That petitioner was not detained is not excuse for the delay. In any event, the Court in an effort to dispose of the old cases in its docket promulgated on February 27, 2001 A.M. No. 00-9-03-SC distributing among its members said cases, and the herein petition was re-raffled to undersigned ponente.

Petitioner Vicente R. Madarang was charged before the Sandiganbayan with the crime of Malversation in Criminal Case No. 14283, under the following Information:

That sometime in July 1986, or prior thereto, in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a Barangay Captain of Barangay Pahina Central, Cebu City, and as such, is accountable for public funds received by him in such capacity, and having received the total amount of Twenty Thousand Seven Hundred Pesos (P20,700.00) from a lessee as rentals of the real property owned by the City of Cebu, did then and there, willfully, unlawfully, and feloniously, with grave abuse of confidence, misappropriate, embezzle and take away the aforesaid funds which he misappropriated and converted to his own use and benefit, to the damage and prejudice of the government in the aforestated amount.

(p. 68, Rollo.)

Petitioner pleaded not guilty to the charge and stood trial, resulting in a judgment of conviction, accordingly disposing:

WHEREFORE, the Court finds Vicente R. Madarang guilty beyond reasonable doubt of the crime of malversation of public funds defined in Article 217 of the Revised Penal Code and charged in the Information at bar. Appreciating in his favor the mitigating circumstance of restitution and applying the Indeterminate Sentence Law, the Court imposes upon him the penalties of imprisonment ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS, and ONE (1) DAY of reclusion temporal, as maximum; fine in the amount of P20,700.00, and perpetual special disqualification.

The amount malversed having been restituted, no civil liability is imposed upon Madarang.

With cost.

(pp. 80-81, Rollo.)

Each side presented only one witness. Cipriano R. Jimeno, State Auditor I for the Visayas Region, testified for the

prosecution while petitioner testified in his defense.

The undisputed facts as summarized by the Sandiganbayan are as follows:

It appears from the pre-trial stipulations and the evidence of the parties that the City of Cebu owned a parcel of land at Panganiban Street, Barangay Pahina Central, Cebu City. With the previous permission of the Sangguniang Panlungsod of the City and for the purpose of raising funds for the operations of the Barangay Tanods and installation of a water system in the barangay hall, Barangay Pahina Central, represented by Barangay Captain Vicente R. Madarang, and Mrs. Dora M. Lim, owner of Louis Pharmacy, executed a Lease Agreement on January 17, 1984, over a portion of the property. Mrs. Lim undertook to pay to the Barangay a monthly rental of P300.00 for a period of 20 years from that date (TSN, September 2, 1992, pp. 11; Pre-Trial Order, Records, p. 137; Exh. "B").

Even before the lease agreement was executed, Madarang, through his Barangay Secretary Boy Colina, received from Mrs. Lim on November 20, 1983, the amount of P1,800.00 as advance rental. Subsequent payments of advance rentals were personally received by Madarang as follows:

On May 15, 1984, for May 1988

To May 1986-----P7,200.00

On September 1, 1985 for May

1986 to Dec. 1987-----5,700.00

On November 27, 1985, for 1988-----3,600.00

(TSN, May 17, 1993, p. 7)

Then on May 29, 1986, Madarang received the advance payment of the increase in rental for 1987 and 1988 in the sum of P2,400.00. All in all as of May 29, 1986, he had collected from Mrs. Dora Lim in accordance with the Lease Agreement the total of P20,700.00 including the P1,800.00 receipted by Boy Colina for him (Exh. "C", "C-1" to "C-4"; TSN, May 17, 1993, pp. 7-11, 37; Pre-Trial Order, Records, pp. 137-138).

In July 1986, Cipriano P. Jimeno, Auditor I, and Maria O. Supo, Auditing Examiner I, Regional Office No. VII, Commission on Audit, Cebu City, conducted an audit of the 10% share of Barangay Pahina Central from 1983 to 1985. In the course, thereof, they found that Madarang had collected advance rentals from Mrs. Lim amounting to P20,700.00. The receipts issued for the collections were not the official receipts required by Section 68 of Presidential Decree No. 1445, but pieces of bond paper. The auditor also discovered that the amounts collected had not been deposited with the Treasurer of Cebu City, for proper recording and accounting in violation of Section 69 of the same decree. They rendered their report dated August 12, 1986, recommending that Madarang be required to issue the corresponding official receipts and deposit the P20,700.00 with the City Treasurer of Cebu City (Exhibits "F", "G", "C", "C-1" to "C-4"; September 2, 1992, pp. 5-12).

Accordingly, Leah A. Ebarle, City Auditor of Cebu City, wrote Madarang a letter dated September 5, 1986, requiring him to issue the necessary official receipts and deposit the amounts with the City Treasurer. This letter he received as evidenced by his answer to do so, notwithstanding the follow-up letter of September 30, 1986, which he received on October 8, 1986 (Exh. "D", "E", "g"; Pre-Trial Order, Records, pp. 138; TSN, September 2, 1992, pp. 14-17; TSN, May 17, 1993, pp. 20-21).

Madarang, however, offered an explanation for his failure to deposit. According to him, P1,200.00 of the P20,700.00 which he collected in cash, was paid to suppliers of materials for the water system of the barangay hall. He presented Resolution No. 19 (Series of 1984) passed by the Barangay Council on April 8, 1984, appropriating P1,200.00 for the materials (Exh. "3", "6"; TSN, May 17, 1993, pp. 10-11, 14-15, 18-19).

The amount of P7,200.00 of the P20,700.00, which he also collected in cash, Madarang continued, was paid to suppliers of barangay police uniforms. He adduced Resolution No. 31 (Series of 1984) approved by the Barangay Council on November 4, 1984, appropriating the amount for the purpose, and a list of recipients of the uniforms (Exh. "2", "4", "6"; TSN, May 17, 1993, pp. 10-11, 15-18).

The balance of P12,300.00 was, Madarang further explained, the costs of medicines which members of his barangay bought from Mrs. Lim on credit, which he guaranteed payment, but which she charged against the rentals due from her. Madarang and Mrs. Lim agreed that she would sell medicines on credit when presented with the doctor's prescriptions bearing his signature. Madarang introduced alleged samples of the prescriptions now marked Exhibits 10, 10-a to 10-q bearing dates from September 1983 to July 1984 (TSN, May 17, 1993, pp. 10-13; Exh. "5", "6"; Pre-Trial Order, Records, pp. 137-138).

On January 6, 1987, Madarang deposited with the City Treasurer the amount of P20,700.00 representing "rental of Louis Pharmacy," as shown by the Official Receipt issued on that date in the name of Milagros Bagano, Barangay Treasurer of Pahina Central. This was after he received the subpoena sent to him on December 9, 1986, by Deputized Tanodbayan Prosecutor Generosa G. Laura and also after more than three months from the demand to deposit the amount with the City Treasurer. (Exh. "7", "9"; TSN, May 17, 1993, pp. 24-25).

(pp. 126-129, Rollo.)

Petitioner assails his conviction, insisting that: the Sandiganbayan has no jurisdiction to try the criminal case for malversation of public funds against him; even if it has jurisdiction, the Sandiganbayan committed serious errors of judgment and grave abuse of discretion in finding petitioner guilty of the crime charged, when all the elements thereof are not attendant; petitioner's conviction was made solely on the basis of the feeble and uncorroborated testimony of the prosecution's sole witness failing to recognize that the evidence for the prosecution is too frail and inadequate to support petitioner's conviction; and the Sandiganbayan erred in convicting him notwithstanding the deposit he made with the City Treasurer despite the absence of an official and unverified report and findings of shortage of funds.

The lengthy assignments of errors raised and the arguments adduced in the petition devolved upon us to give it due course. After a careful review of the records of the case, we find the petition impressed with merit.

Preliminarily, there is no question that Sandiganbayan has jurisdiction to try the criminal charge of malversation of public funds against petitioner. Both the offices of the Solicitor General and Special Prosecutor are in concurrence. The Sandiganbayan has jurisdiction over the offenses or felonies committed by public officers and employees in relation to their office where the penalty prescribed by law is higher than prison correccional or imprisonment for 6 years or a fine of P6,000.00 (Sec. 4(a)(2), P.D. No. 1606, as amended). The vital fact is that petitioner is an employee of, or in some way connected with, the government and that, in the course of his employment, he received money or property belonging to the government for which he is accountable. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the information (Serdoncillo vs. Benolirao, 297 SCRA 448 [1999]). The averments in the information that petitioner, as barangay captain, while in the performance of his public functions, received public funds for which he is accountable effectively vested jurisdiction over the offense on the Sandiganbayan.

The crime of malversation is defined and penalized under Article 217 of the Revised Penal Code, the pertinent provisions of which read:

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 of the misappropriation or malversation of such funds or property, shall suffer:

x x x

x x x

x x x

4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 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 uses. (As amended by Rep. Act No. 1060.)

The elements common to all acts of malversation under Article 217 are that: (a) the offender be a public officer; (b) he had custody or control of funds or property by reason of the duties of his office; (c) those funds or property were public funds or property for which he was accountable; and (d) he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them (Reyes, *The Revised Penal Code, Criminal Law*, Vol. II, 1993 ed., p. 363).

Concededly, the first three elements are present in the case at bar. Lacking any evidence, however, of shortage, or taking, appropriation, or conversion by petitioner or loss of public funds, there is no malversation (*Narciso vs. Sandiganbayan*, 229 SCRA 229 [1994]). True, the law creates a presumption that the mere failure of an accountable officer to produce public funds which have come into his hand on demand by an officer duly authorized to examine his accounts is prima facie evidence of conversion. The presumption is, of course, rebuttable. Accordingly, if petitioner is able to present adequate evidence that can nullify any likelihood that he had put the funds or property to personal use, then that presumption would be at an end and the prima facie case is effectively negated.

The Office of the Solicitor General submits that in the case at bar, that presumption had indeed been overcome because the evidence adduced by petitioner adequately established that he has fully accounted for the supposed cash shortage. Further, there is no evidence that petitioner misappropriated the funds representing rentals from the drugstore. The testimony of the lone prosecution witness that the P20,700.00 paid by Mrs. Lim was not remitted to the Cebu City treasury cannot be taken as an indication that petitioner malversed said amount. In this light, the Solicitor General recommends that petitioner be acquitted of the crime charged.

The Court agrees with the Solicitor General's assessment of the evidence and accepts his recommendation that petitioner be absolved of the accusation against him.

The Sandiganbayan stressed that the receipts issued for the rental collections were not official receipts as required by Section 68 of P.D. 1445; that no document was introduced evidencing the purchases of uniforms and materials, such as sales invoices or receipts issued by suppliers, not to mention the documents required by the rules like the disbursement vouchers, requisitions, purchase orders, etc., in violation of Section 4, subsections (6) and (7), likewise of Presidential Decree No. 1445; that the testimony of petitioner merely stated that he bought uniforms and materials with no other details; that the document presented as regards the amount of P12,300.00 merely showed medicines prescribed and the prices thereof; and that the refund of P20, 700.00 after more than 3 months

from demand did not extinguish the criminal liability of petitioner.

Petitioner, however, was able to nullify the inference that he did put the missing funds to his personal use. After it was allegedly discovered that petitioner received advance rentals of P20,700.00, he presented resolutions passed by the Barangay Council appropriating a total of P8,400.00 to be paid to suppliers of materials for the water system of the barangay hall and for the barangay police uniforms. Notably, the lease agreement between Barangay Pahina Central represented by petitioner as the barangay captain thereof, and Mrs. Dora M. Lim, was executed for the purpose of raising funds for the operations of the Barangay Tanods and the installation of a water system in the barangay hall.

Too, petitioner did not receive the P20,700.00 all in cash owing to the deduction from the rentals due of P12,300.00 by Mrs. Lim to cover the cost of medicines advanced to the barangay residents and tanods. Collection notices were even in fact sent to those with unpaid accounts. Verily, petitioner cannot be faulted, much less convicted, in consequence. Petitioner's act of guaranteeing the payment thereof in order to assist his constituents who are in dire need of medicines but lack financial capacity to pay therefore was done in good faith under the belief that he was acting correctly for the good of the residents in his community.

The foregoing evidence notwithstanding, the Sandiganbayan was steadfast in holding that all the elements aforementioned were attendant, relying solely on the aforesaid legal presumption. It rejected the testimonial and documentary evidence advanced by petitioner which rejection was founded on several reasons none of which can stand scrutiny. There is showing that the Sandiganbayan failed to appreciate facts and circumstances that would have altered its conclusion, hence, it is incumbent upon this Court to correct such mistake (*People vs. Dasoy*, 312 SCRA 432 [1999]; *People vs. Caratay*, 316 SCRA 251 [1999]; *Hemedes vs. CA*, 316 SCRA 347 [1999]).

The Court has repeatedly said that when the absence of funds is not due to the personal use thereof by the accused, the presumption is completely destroyed; in fact, the presumption is deemed never to have existed at all (*Diaz vs. Sandiganbayan*, 302 SCRA 118 [1999]). The prosecution which has the responsibility of establishing by proof beyond reasonable doubt that petitioner had committed the offense charged, essentially relied on the aforesaid statutory presumption and failed to present any substantial piece of evidence which would indicate that petitioner had used the funds for personal gain. The fact is that there is no evidence that petitioner ever put the public funds in his custody to his personal use. The failure of petitioner to deposit the amount with the City Treasurer of Cebu City could be explained as it was satisfactorily explained by petitioner. Undoubtedly, no malice or fraud can be imputed to him. Petitioner's display of benevolence, commitment to and compassion for the poor may run counter to certain provisions of law and to some auditing rules and regulations, resulting in possible administrative sanctions. However, these certainly do not amount to the embezzlement of the funds of his office to merit prosecution and conviction. Mere absence of the funds is not sufficient proof of conversion. Neither is the mere failure of petitioner to turn over the funds at any given time sufficient to make even a *prima facie* case. Conversion must be affirmatively proved, either by direct evidence or by the production of facts from which conversion necessarily follows (*U.S. vs. Catolico*, 18 Phil. 504 [1911]).

Apparently, the Sandiganbayan, in convicting petitioner, depended on the findings of the prosecution's only witness and wavered on the notion that the evidence presented by the defense is crowded with flaws and deficiencies. But since audit examination left much to be desired in terms of thoroughness and completeness, the same can not be made the basis for holding petitioner liable for malversation (*Dumagat vs. Sandiganbayan*, 211 SCRA 171, [1992]).

The constitutional presumption of innocence requires of courts more than casual consideration of every circumstance tending to show the guilt of an accused. Courts have the imperative duty to put the prosecution's

evidence under severe testing (*People vs. Diaz*, 308 SCRA 744 [1999]). To be sure, a finding of prima facie evidence of accountability does not shatter the presumptive innocence petitioner enjoys because before prima facie evidence arises, certain facts still have to be proved (*People vs. Mingoa*, 92 Phil. 856 [1953]). Withal, the Sandiganbayan should have satisfied itself that petitioner is guilty beyond reasonable doubt of the offense charged. A finding of guilt must rest on the strength of the prosecution's own evidence, and not on the weakness, deficiency, or absence of evidence for the defense (*People vs. Batidor*, 303 SCRA 335 [1999]; *People vs. Moreno*, 321 SCRA 334 [1999]; *People vs. Vidal*, 303 S 1 [1999]). Accordingly, the bare testimony of the solitary prosecution witness clearly falls short of the quantum of proof required and does not fulfill and pass the test of moral certainty to be deemed sufficient to support a conviction.

WHEREFORE, the petition is GRANTED. The decision of the Sandiganbayan is hereby REVERSED and SET ASIDE, and petitioner VICENTE R. MADARANG is ACQUITTED of the crime of malversation of public funds for insufficiency of proof beyond reasonable doubt. Cost de officio.

SO ORDERED.

Vitug, Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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