

FRANCISCO ENRIQUEZ Y CRUZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND SANDIGANBAYAN, RESPONDENTS.

G.R. No. 119239. May 09, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The instant petitions for review on certiorari seek the reversal of the Sandiganbayan's decision of February 28, 1995, in Criminal Case No. 14385, convicting herein petitioners Francisco C. Enriquez (ENRIQUEZ) and Carmencita G. Espinosa (ESPINOSA) of the crime of malversation of public funds, defined in Article 217(4) of the Revised Penal Code.

The essential antecedents as can be gathered from the documentary and testimonial evidence are the following:

ENRIQUEZ was Municipal Treasurer, while ESPINOSA was Administrative Officer and acting Municipal Cashier of the Office of the Municipal Treasurer of Pasig (Pasig Treasury). By virtue of Local Government Audit Order No. 88-01-3, an audit team headed by Carmencita Antasuda as team leader conducted an audit examination of the cash and accounts of the Pasig Treasury covering the period from May 4, 1987 to November 30, 1987. The audit disclosed, among other things, "accused Enriquez's accounts contained a shortage amounting to P3,178,777.41, which shortage was mainly due to a dishonored China Banking Check No. 303100 dated October 7, 1987 in the amount of P3,267,911.10." Said check was deposited with the Quezon City District Treasury Office (Quezon City Treasury) as part of the collections of the Pasig Treasury. The check was dishonored for the following reasons: (a) it was not received in payment of any tax; (b) it was not acknowledged by an official receipt; (c) the account against which it was drawn was under garnishment; (d) the signatory therein was not authorized to sign; and (e) it was drawn against insufficient funds.

On December 3, 1987, a letter of demand was sent to ENRIQUEZ by the Commission on Audit (COA) to restitute the value of the dishonored check. In a reply dated December 5, 1987, ENRIQUEZ denied responsibility for the shortage and pointed to ESPINOSA as the one to whom the letter of demand should be addressed as the custodian of said check

China Banking Check No. 303100 dated October 7, 1987 in the amount of P3,267,911.10 was payable to the Municipal Treasurer of Pasig and was drawn by one "D. Noble". The check bears ENRIQUEZ's indorsement at the back and was accompanied by a statement of checks also bearing the initials of ENRIQUEZ. The subject check was transmitted from the Pasig Treasury to the Quezon City Treasury as the official district treasury for municipal deposits. According to Benito Buenviaje, a casual janitor of the Pasig Treasury, on October 15, 1987, ENRIQUEZ instructed him to get the bundled checks from his table and to deliver them to the Quezon City Treasury. He could not recall how many checks were taken from the table of the municipal treasurer because they were already bundled. Benito Buenviaje was issued two official receipts, one of which, O. R. No. 279451, was in the amount of P3,308,774.44, and included the amount of the dishonored check.

Several days after, the Quezon City Treasury informed the Pasig Treasury of the dishonor of CBC Check No.

303100. The check was deposited by the Quezon City Treasury under Account No. 6 with the PNB, Cubao Branch, for credit to the Pasig Treasury but it was dishonored and returned on October 21, 1987 for the reasons above-mentioned.

The then Mayor Mario Raymundo of Pasig sent a letter-request to the NBI to conduct an investigation of the alleged shortage and Atty. Federico Opinion, Jr., Chief of the Special Action Unit of the NBI was designated, together with two (2) other agents to conduct the investigation. As found by the NBI, the drawer of subject check was a certain "D. Noble", with the account (CBC No. 0026813-6) registered in the name of one Leonora Reyes of EDSA Home Improvement Center, Inc. In the course of the investigation, Atty. Opinion furnished Eliodoro Constantino, Senior Document Examiner of the NBI, the initials of accused Enriquez appearing in the subject check and the statement of checks, together with standards of comparison consisting of several documents. A comparative examination by the NBI Questioned Document Expert of the specimens submitted revealed that the questioned and standard sample specimen initials of ENRIQUEZ were not written by one and the same person.

It appears that less than a month before the dishonor of the subject check or on September 23, 1987, ESPINOSA herself had gone to the Quezon City Treasury to make a deposit of checks and statement of checks. Felisa Cervantes, Computer Operator of the Quezon City Treasury, accepted the checks and the corresponding statements and issued Official Receipt No. 279339 in the amount of P3,583,084.18. ESPINOSA later returned to Felisa Cervantes and requested her to cross-out the first figure "3" on the official receipt to conform with the actual amount of P583,084.18 deposited therein.

In an Information dated February 5, 1990, ENRIQUEZ together with ESPINOSA were charged with Malversation of Public Funds committed as follows:

"That during the period from May 4, 1987 to November 30, 1987, or on dates subsequent thereto, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused Francisco C. Enriquez being then the Municipal Treasurer of Pasig, Metro Manila, Carmencita Espinosa then the Administrative Officer I and designated as Cashier in the Office of the Municipal Treasurer of Pasig, Metro Manila and Belinda Santos[1], a Clerk in the Realty Tax Section and designated as Asst. Cashier in the Treasurer's Office of Pasig, Metro Manila, duly appointed/designated and qualified as such, hence, all accountable officers by reason of the duties of their respective offices, accountable for the funds and properties received by them in their official positions as such, conspiring and confederating with each other and taking advantage of their official positions with wanton disregard of auditing laws, rules and regulations, did then and there willfully, unlawfully and feloniously and with grave abuse of confidence, misappropriate, misapply and convert to their own personal use and benefit the amount of THREE MILLION ONE HUNDRED SEVENTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY-SEVEN AND 41/100 (P3,178,777.41), Philippine currency, from the said public funds received by them in their respective official positions aforementioned in the Office of the Municipal Treasurer of Pasig, Metro Manila, to the damage and prejudice of the government.

CONTRARY TO LAW."[2]

When arraigned, on April 23, 1990, ENRIQUEZ and ESPINOSA pleaded not guilty to the charge. After trial, the Sandiganbayan rendered its judgment, promulgated on February 28, 1995, convicting ENRIQUEZ and ESPINOSA, thusly:

"WHEREFORE, judgment is hereby rendered finding both accused Francisco Enriquez y Cruz and Carmencita Espinosa y Gonzales GUILTY beyond reasonable doubt as co-principals in the offense of Malversation of Public Funds, as defined and penalized under Article 217, paragraph 4 of the Revised Penal Code and crediting each of them with the mitigating circumstance of voluntary surrender, without any aggravating circumstance in

offset, and applying the Indeterminate Sentence Law, each of them is hereby sentenced to suffer the indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor, as the minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as the maximum; to further suffer perpetual special disqualification; to pay, jointly and severally, the Government of the Republic of the Philippines in the same amount of P3,178,177.41, and to pay their proportional share of the costs of the action.

SO ORDERED."[3]

Accused ENRIQUEZ and ESPINOSA blamed each other for the shortage. ENRIQUEZ tried to show that he is not the custodian of the funds of the municipality and that it is ESPINOSA and the deceased co-accused Belinda Santos who had custody and safekeeping over the funds and the keys to the vault. For her part, ESPINOSA claimed that it was accused ENRIQUEZ and Imelda San Agustin, the duly appointed cashier who are the ones responsible for the alleged shortage. The Sandiganbayan found that ENRIQUEZ and ESPINOSA in conspiracy with each other misappropriated public funds in their custody and sought to cover up the shortages already existing in the municipal treasury's collections by depositing the subject China Banking Corporation check in the amount of P3,178,777.41. The Sandiganbayan, in its assailed decision, ratiocinated thus:

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From the narration of the evidence, testimonial and documentary, adduced by both accused Enriquez and Espinosa in their defense, it appears that certain circumstances of paramount importance have been ignored or overlooked by the defense, considering the foregoing admitted facts on record, which are, that the instant prosecution is for Malversation of Public funds and that once a shortage in said funds had been established, it is the accountable officer (or officers) who bear(s) the obligation to submit a satisfactory explanation as to why he (or they) should not be held accountable therefor (Article 217, Revised Penal Code).

These circumstances have not been thoroughly nor diligently delved into by either of the accused, who were apparently more concentrated in pointing to each other and shifting the blame for the appearance and/or introduction into the municipal treasurer's accounts of a check in the amount of P3,267,911.10 drawn against the China Banking Corporation, dated October 7, 1987 (Exhibit E). As testified to by prosecution witness Auditor Carmelita Antasuda, said check was made to form part of the collections of the municipal treasurer, sometime in October 1987, despite the fact that there was no official receipt appearing to have been issued for it and neither does it appear to have been issued in payment of taxes or obligations due to the municipality of Pasig. Afterwards, said check, bearing accused Enriquez' indorsement at the back, was included in a statement of checks (Exhibit P) prepared in the Pasig Municipal Treasurer's Office for transmittal to, and deposit with, the Quezon City Treasurer's Office, the latter being the official district treasury for municipal deposits.

The statement of the checks (Exhibit P), together with the check in question (Exhibit E), and another statement of checks (Exhibit 7-Espinosa) was admittedly brought by Benito Buenviaje, a casual janitor in the municipal treasurer's office, upon the instruction of accused Enriquez to the Quezon City Treasurer's Office and received thereat on October 15, 1987. Buenviaje was issued two official receipts, one of which, O. R. No. 279451 (Exhibit 7-b-Enriquez), was in the amount of P3,308,774.44, which included the dishonored check (Exhibit M-1, Page 2 par. 3). The check was deposited by the Quezon City Treasury Office under Account No. 6 with the PNB, Cubao, Branch, for credit to the Pasig municipal treasury but it was dishonored and returned on October 21, 1987 because the account was under garnishment and the check had an unauthorized signatory (Exhibit E-2). As found by the NBI, the drawer of the said check was a certain "D. Noble", with the account (CBC No. 0026813) being in the name of one Leonora Reyes of EDSA Home Improvement Center, Inc. (Exhibit M-1, page 3, par. 5).

Hence, as of October 15, 1987, the municipal collections had a virus fatally imbedded within it, a wayward private check which cannot lawfully be credited to the municipal treasury or to the accountability of either of

the accused herein, as primary and secondary accountable officers. Worse, on September 23, 1987, accused Espinosa had tried to foist a similar scam by personally bringing to the District Treasury in Quezon City bundles of checks listed in three (3) statements of checks, dated September 15, 1987 and signed by accused Enriquez, totaling P583,084.18 (Exhibits 22, 22-a and 22-b-Espinosa). While the total amount on the adding machine tapes when presented, was P3,583,084.18, as testified to by Maria Felisa Cervantes (TSN, pp. 6-31, May 21, 1991), with accused Espinosa being issued Official Receipt No. 279339 (Exhibits 11-to11-d-Enriquez), she later returned to Cervantes and said she had committed a mistake and had Cervantes cross out the figure '3' in said receipt to conform with the actual amount of the checks which was P583,084.18 only.

Coupled with the same scenario that transpired on October 15, 1987 with respect to the dishonored CBC Check in the amount of P3,267,911.10 (Exhibit E), which likewise reached the Quezon City Treasurer's Office thru a statement of checks signed by accused Enriquez (Exhibit P), then it can logically be presumed that during the months of September and October, 1987, both accused Enriquez and Espinosa were already aware of an impending shortage in their accountabilities in the neighborhood of P3-million and were attempting to conceal or cover-up this shortage through the same *modus operandi*.

The audit examination which was conducted on December 1, 1987 (Exhibit D) covered the period from May 4, 1987 to November 30, 1987. The shortage of P3,178,777.41 was arrived at as follows:

"Accountability:

Beginning Balance, May 4, 1987 P 17,843,0007.26

Add: Collections and Withdrawals 184,065.858.18

Total P 201,908,865.44

Less: Disbursements and Deposits 194,433,214.14

Balance of Accountability P 7,475,651.30

Cash and Valid Cash Items 4,296,873.89

Shortage P 3,178,177.41

The shortage is accounted for as follows:

Disallowed cash item CBC Check #303100 P 3,267,911.10

Overrecording of withdrawals (100,018.10)

Underrecording of withdrawals 10,001.18

Overremittance of collections (539.00)

Overrecording of deposits 10.40

Overfooting of expenditures .53

Overfooting of collections (.04)

Underfooting of collections (.80

Total P 3,178,777.42

It would appear probable, therefore, that even as early as May and prior to October 15, 1987, the shortage had already existed in the municipal accounts, traceable to and aggravated by over-recording/under-recording of

withdrawals, under-remittance/over-remittance or collections, over-recording of deposits, over-footing of expenditures, over-footing/underfooting of collections and, most importantly, the dishonored CBC Check for P3,267,911.10 (Exhibit E). Since the total accountability of P7,475,651.30, as found by the audit team less cash and valid cash items amount to P4,296,873.89 still resulted in a shortage of P3,178,777.42 then the only logical and plausible conclusion to be arrived at is that collections were, indeed, short between May 4, 1987 and November 30, 1987 and, consequently, efforts had to be exerted by accused Enriquez and Espinosa, even including resort to extra-legal measures, to conceal and/or cover-up the missing public funds. Naturally, such measures can only be resorted to and utilized by the personnel therein who would be held responsible for any shortage that would ultimately be found. They are accused Enriquez, the primary accountable officer, being the municipal treasurer, and accused Espinosa and the late accused Belinda Tuaño-Santos, whom he had designated as Cashier and Assistant Cashier as early as December 3, 1984 (Exhibit C-1), and who performed the duties appurtenant thereto despite the appointment of Imelda San Agustin as Cashier on July 1, 1987 (Exhibit 1-Espinosa). As to why accused Enriquez still allowed accused Espinosa, and the late accused Santos, whose actual appointments were those of Administrative Officer I and Revenue Collection Clerk, respectively (Exhibits C and A), to continue discharging the duties and functions of Cashier and Asst. Cashier after July 1, 1987, only he can explain. The burden, likewise, is on him to explain why he allowed all three of them (San Agustin, Espinosa and Santos) to perform over-lapping work and permitted a situation to arise where accountability could not be pin-pointed for collections, cash-counts and remittances."

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"As reflected on the record, accused Enriquez and Espinosa were engaged in mutual recriminations, with the former pointing to the latter, and the latter pointing to the former and Imelda San Agustin, as the ones responsible for the irregular entry and receipt of the dishonored CBC Check for P3,278,161.10 (Exhibit E) as part of the municipal collections, with accused Enriquez even denying his signatures/initials on the check itself and the statement of check (Exhibit P), through which said dishonored check was remitted to the Quezon City Treasurer's Office. But, as We have previously pointed out, for purposes of the instant prosecution, it is completely and entirely immaterial and irrelevant as to who received said CBC check and who remitted the same as part of the municipal collections. What should be explained is why no official receipt was issued therefor and wherein will be seen the nature and purpose for the issuance of the check and why it had to be utilized for covering up shortages already existing in the municipal treasury's collections.

There being no evidence on record to the contrary, then We can logically presume that the dishonored check (Exhibit E) had been utilized for either of these objectives, to wit: (a) it was surreptitiously encashed with the municipal treasury through a revenue collection clerk or someone performing collection tasks, most probably accused Santos, and after which the check was included in the Daily Statements of Collections, or (b) it was borrowed from the account holder, Leonora Reyes, or from one D. Noble who was in possession thereof, for the specific purpose of covering-up missing collections in the municipal treasury. Either way, the transaction was irregular and improper, as were other transactions in said office. As pointed out by Auditor Antasuda in her Memorandum for the Chairman, COA, dated July 15, 1988 (Exhibit F-1), the audit examination revealed that not all the checks in the municipal treasury were deposited intact; there were delayed deposits of collections; it took one month or more for collections to be deposited with the District Treasurer; the cash balances always exceeded the cash reserve limit; cash was transferred from one fund to another with check collections being used to replace the transferred cash; there were loose controls and no control records in the handling of dishonored checks, and delayed issuance of receipts on check payments, among many other defects and deficiencies (Exhibit F-1 a)."[4]

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Through their separate petitions for review, ENRIQUEZ and ESPINOSA come to this Court for relief respectively raising numerous and lengthy assigned errors which we shall summarize herein. For ENRIQUEZ, that the Sandiganbayan erred in convicting him: 1. despite absence of proof of the missing funds; 2. despite the overwhelming and un rebutted evidence that he had no participation in the negotiation of the subject check; and 3. despite the inherent weakness of the prosecution evidence. For ESPINOSA, that the Sandiganbayan erred in convicting her: 1. considering she was not an accountable officer at the time the alleged shortage was incurred; 2. there was no proof that she tried to conceal or cover-up the missing public funds; 3. there was no proof that she collected, misappropriated or spent the missing funds for her own personal benefit; and 4. the prosecution failed to prove her guilt beyond reasonable doubt.

The arguments boil down to whether or not ENRIQUEZ and ESPINOSA had incurred a shortage in their accounts as Municipal Treasurer and Administrative Officer/designated as Acting Cashier, respectively, which they had attempted to conceal through a bad check.

In *Diaz vs. Sandiganbayan*,^[5] this Court held:

"Generally, the factual findings of the Sandiganbayan are conclusive upon this Court but there are established exceptions to that rule, such as, *sans preclusion*: when (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on a want of evidence and/or contradicted by evidence on record. In these instances, this Court is bound to review the facts in order to avoid a miscarriage of justice."^[6]

We could do no less than to re-examine the evidence on record considering that the decision of the Sandiganbayan, pertinent portions of which we have quoted earlier, appears to be grounded on probabilities and conjecture. Miso

After an assiduous scrutiny of the pleadings and the evidence, testimonial and documentary, the Court is convinced that the acquittal of ENRIQUEZ and ESPINOSA must be decreed.

The crime of malversation for which ENRIQUEZ and ESPINOSA had been charged is defined under Article 217 of the Revised Penal Code, its pertinent provisions 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, xxx."

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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."

The elements of malversation under the above penal provision are:

- (a) That the offender is a public officer.
- (b) That he has the custody or control of funds or property by reason of the duties of his office.
- (c) That those funds or property are public funds or property for which he is accountable.
- (d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence,

permitted another person to take them.[7]

Verily, the first two elements are present in this case. The findings of the Sandiganbayan that ENRIQUEZ and ESPINOSA are public officers who have the custody or control of funds or property by reason of the duties of their office are duly supported by the evidence. It is the last two elements, i.e., whether or not the amount represented in the dishonored check constituted public funds and whether ENRIQUEZ and/or ESPINOSA really misappropriated said public funds, where the instant petitions focus themselves. We are constrained to conclude that the prosecution, upon whose burden was laden the task of establishing proof beyond reasonable doubt that petitioners had committed the offense charged, failed to discharge this obligation. The Sandiganbayan found the denials of the accused and their acts of shifting the blame and passing the responsibility for the dishonored check to each other as unacceptable and indicative of their guilt. However, it must be emphasized that although the evidence for the defense may be characterized as weak, criminal conviction must come from the strength of the prosecution's evidence and not from the weakness of the defense.[8] We are not convinced that the evidence in this case has proven beyond reasonable doubt that the accused are guilty of the crime charged for reasons stated hereunder:

First. There is no evidence to prove that the Pasig Treasury incurred a cash shortage in the amount of P3,178,777.41, which amount, incidentally, is even less than the amount of the dishonored check. As per report of the audit team, the alleged shortage was computed and based on the value of the dishonored check. We reproduce again the pertinent portion of the audit examination relied upon by the Sandiganbayan to establish the shortage:

"The shortage is accounted for as follows:

Disallowed cash item CBC Check #303100 P 3,267,911.10

Overrecording of withdrawals (100,018.10)

Underrecording of withdrawals 10,001.18

Underremittance of collections 1,410.55

Overremittance of collections (539.00)

Overrecording of deposits 10.40

Overfooting of expenditures .53

Overfooting of collections (.04)

Underfooting of collections (.80

Total P3,178,777.42"[9]

As stated in the assailed decision, it was only the drawn check, based on the audit examination that brought about the shortage. It was palpable error for the Sandiganbayan to conclude that the check which the audit team had pinpointed as the shortage due to its dishonor was at the same time, intended and used by ENRIQUEZ and ESPINOSA to "cover up" shortages in the funds allegedly in their custody. The shortage must be clearly established as a fact, i.e., that over and above the funds found by the auditor in the actual possession of the accountable officers, there is an additional amount of P3,178,777.42 which could no longer be produced or accounted for at the time of audit. Evidence of shortage is necessary before there could be any taking, appropriation, conversion, or loss of public funds that would amount to malversation. It makes no sense for any bogus check to be produced to "cover up" an inexistent malversation.[10]

Indeed, no less than the sole witness for the prosecution, audit team leader, Carmelita Antasuda, who conducted the cash count and cash examination of the Pasig Treasury, testified that based on their audit examination, it was only the subject check that brought about the shortage. Her testimony on this point goes:

Q: Now, your examination covered the months from May to November, 1987, were you able to determine whether in May there were already missing funds from the Treasury of Pasig?

A: In our examination we cannot determine if there were missing funds prior to our cut-off date.

Q: In other words from the months of May, June, July, August and September, there was not shown or you were not able to discover whether there had been losses already during those months?

A: No sir.

Q: In your testimony last Friday you related to us that only checks were remitted from Pasig to Quezon City Treasury and the cash collections were retained in Pasig to take care of payments for local obligations, is that right?

A: Yes sir.

Q: Now, you also stated that you were not able to determine whether checks or cash or whether just cash was supposed to have been lost; is that right?

A: Yes sir.

Q: Now, if a check, as you also said is payable always to the Municipal Treasury of Pasig, is that right?

A: Yes sir.

Q: If a check was lost, the record of the Municipal Treasurer of Pasig would record the payment as record the obligations of the payee as unpaid; is that right?

A: When was the check was lost.

Q: Supposing a check was paid to the Municipal Treasurer of Pasig was lost or was not encashed?

JUSTICE ESCAREAL:

Q: While in the possession of?

ATTY. SANCHEZ:

Q: Of the Treasurer of Pasig, meaning it did not enter the cash collections, the encashment of the checks did not enter the treasurer of Pasig would not the obligation for which that amount in check was paid be recorded as still unpaid?

A: I would like to clear that. When payments are made in the Municipal Treasurer of Pasig through checks it is automatically issued an official receipt for that payment and the check and. and the fact that it is already issued an official receipt it follows that the taxpayer had already paid the amount of his tax.

JUSTICE ESCAREAL:

Q: In this particular case, did you find any official receipt issued for the check?

A: None, Your Honor. There has been no official receipt issued to that particular check.

Q: In the name of the drawer Dean Noble you did not find any official receipt?

A: No sir.

Q: There was no receipt for Mr. Noble in the record of the Treasury of Pasig?

A: None, Your Honor.

JUSTICE ESCAREAL:

You may now proceed.

ATTY. SANCHEZ:

Q: Now, if these cash collections were lost where the object of whatever manipulation that was done according to the charge in this case only cash collections is not the basis of your statement in your recommendation number 1 in Exhibit F, your report is not the basis of that recommendation of yours the fact that these cash collections were lost?

A: In our examination, sir the result that the shortage was on a check corresponding to the amount of the check and it is that check which we disallowed so we do not know if it was cash or it was that check that was cashed that was taken only that we know that it was that check that we disallowed in audit and it is that check that resulted in the shortage."[11]

Equally revealing from the above-quoted testimony of Carmelita Antasuda is her declaration that they could not identify whether it was cash or check that was lost. This admission by the audit team leader necessarily weakens the reliability of the audit findings. The respondent court itself gathered from Antasuda's cross-examination as follows:

"The cashbook that they examined covered the months of May to November 1987 and they conduct cash examinations twice a year. Based on their review, Auditor Diche conducted two cash counts from May to November 1987, one in September 23, 1987 and another on October 9, 1987 but she does not know what were the results of her cash counts. They were not able to find out as to when the check (Exhibit E) was actually entered in the municipal treasury because the collection voucher does not bear any collection pertaining to said check. Neither were they able to discover whether there had been losses during the months from May to September 1987. In fact, there has been no official receipt issued for the said check. They did not find anything irregular in the statements of checks turned over to them by Imelda Augustin.xxx"[12]

Evidently, the audit examination lacked the thoroughness and completeness required by the Manual of Instructions to Treasurers and Auditors and Other Guidelines.[13] In *People vs. Tinga*[14], the Court had occasion to state:

"At this juncture, it may not be amiss to state that considering the gravity of the offense of Malversation of Public Funds, just as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. Accounts should be examined carefully and thoroughly "to the last detail," "with absolute certainty" in strict compliance with the Manual of Instructions. x x x."

Apparently, the Sandiganbayan relied on the statutory presumption that the "[f]ailure of a public officer to have duly forthcoming any public funds 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." It must be emphasized that the prima facie presumption arises only if there is no issue as to the accuracy, correctness, and regularity of the audit findings and if the fact that funds are missing is indubitably established.[15] In the instant case, audit team leader Carmelita Antasuda could not even equivocally state whether it was cash or check that was lost, if at all there was any, belying the accuracy and correctness of the team's audit report.

Second. There is no evidence that ENRIQUEZ or ESPINOSA had received such an amount which they could no longer produce or account for at the time of the audit. The Sandiganbayan merely speculated that it was "surreptitiously encashed with the municipal treasury through a revenue collection clerk or someone performing collection tasks" or "it was borrowed from the account holder for the purpose of covering-up missing collections." In its own words the subject check was a "wayward private check which cannot lawfully be credited to the municipal treasury or to the accountability of either of the accused herein, as primary and secondary accountable officers." [16] For this reason, the Sandiganbayan had to rely on its cover-up theory which is not plausible from the evidence on record.

Third. There is no showing that the subject check was received by the Pasig Treasury in an official capacity; that there was a duty to receive or collect the said amount; and that there was an obligation to account for the same. The evidence submitted, just to the contrary, would point out that the subject check was not issued in payment of taxes or obligations due to the municipality and consequently no official receipt was issued for it. Indeed, the subject check never formed a portion of the public funds of the municipality for which either ENRIQUEZ or ESPINOSA are accountable for.

Fourth. The Sandiganbayan clearly erred in inferring from the incident that transpired on September 23, 1987, wherein ESPINOSA deposited checks with the Quezon City Treasury for which she was issued an official receipt in the amount of P3,583,084.18, but which she later corrected to conform to the actual amount of the checks as P583,084.18, as indicative of a modus operandi to cover-up a shortage in the amount of P3 million. ESPINOSA has explained, and her testimony remains unrebutted, that she requested that the correction be made because she discovered 15 minutes after she was issued the official receipt that the checks and the accompanying statements of checks [17] had not been endorsed and signed by ENRIQUEZ. Moreover, the general rule is that the law will not consider evidence that a person has done a certain act at a particular time as probative of a contention that he has done a similar act at another time. This is the rule of *res inter alios acta* [18] found in Section 34, Rule 130 of the Rules of Court, as amended. [19] Said incident could not even sufficiently establish a plan or scheme between ENRIQUEZ and ESPINOSA to cover-up a shortage that has never been proven.

In view of the foregoing, the presumption is that ENRIQUEZ and ESPINOSA are innocent, and the presumption continues up to the moment their guilt is proved beyond reasonable doubt. To justify their conviction of the offense charged, the evidence must establish their guilt to a moral certainty. In the instant case, the proofs on record fall short of that required criterion. Consequently, the degree of moral certainty required to justify conviction for this particular offense is sorely wanting and petitioners' acquittal thereof must be adjudged.

To repeat, the only facts established by the evidence against ENRIQUEZ is that he instructed Benito Buenviaje to deliver the bundled checks placed on his desk which apparently included the bogus check. His initials appearing thereon were found to be forged by the NBI. On the other hand, the acts established against ESPINOSA consisted of what transpired at the Quezon City Treasury on September 23, 1987. We cannot, however, derive from these circumstances, without more, a conclusion that ENRIQUEZ and ESPINOSA pocketed an amount of more than 3 million pesos from the funds in their capacity as accountable public officers and, to prevent discovery, had caused the issuance of the bogus check to cover up the shortage.

There would appear to have been lapses or deficiencies in the observance of auditing rules and regulations in the handling of the funds of the municipal treasury e. g. delay in deposits of collections, cash balances exceeding cash reserve limit, loose controls and no control records, etc. as pointed out by the audit team, and questions as to how a private check was bundled together with legitimate collections of the Pasig Treasury for transmittal to the Quezon City Treasury, but the same do not warrant a finding of criminal culpability, which requires proof beyond reasonable doubt on the part of ENRIQUEZ and ESPINOSA. However, the Chairman of the Commission on

Audit should be apprised of this decision for whatever action he may deem appropriate.

WHEREFORE, the decision of the Sandiganbayan (Second Division) promulgated on February 28, 1995 is REVERSED and SET ASIDE, and the petitioners Francisco C. Enriquez and Carmencita G. Espinosa are ACQUITTED of the charge of malversation of public funds under Article 217(4) of the Revised Penal Code. The Division Clerk of Court is directed to furnish the Chairman of the Commission on Audit copies of this decision.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

Purisma, J., abroad-no part.

[1] Charges against her were dismissed due to her demise during the pendency of the proceedings.

[2] Original Records (OR), pp. 1-2.

[3] OR, pp. 965-966.

[4] OR, p. 948-957.

[5] 302 SCRA 118 (1999).

[6] See p. 137.

[7] Nizurtado vs. Sandiganbayan, 239 SCRA 33 (1994).

[8] Layug vs. Sandiganbayan, 245 SCRA 123 (1995).

[9] OR, p. 952.

[10] Narciso vs. Sandiganbayan, 229 SCRA 229 (1994).

[11] TSN dated September 18, 1990, pp. 14-17, underscoring supplied.

[12] OR, p. 901-902.

[13] Sec. 561. Prohibition of incomplete examinations. – Examinations shall be thorough and complete in every case to the last detail. Mere count of cash and valid cash items without verifying the stock of issued and unissued accountable forms and various records of collections and disbursements, as well as the entries in the cashbook is not examination at all.

[14] 160 SCRA 483 (1988).

[15] Rizon vs. Sandiganbayan, 202 SCRA 370 (1991), underscoring supplied.

[16] Decision, p. 12.

[17] Exh. 22-A- Espinosa to Exh. 22-B-Espinosa.

[18] Ricardo J. Francisco, Basic Evidence (1991), pp. 182-184.

[19] "Evidence that one did or did not do a certain a thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage and the like."

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