

FIDEL T. SALAMERA, PETITIONER, VS. SANDIGANBAYAN, FIRST DIVISION, RESPONDENT.

G.R. No. 121099. February 17, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal via certiorari taken by petitioner from a decision of the Sandiganbayan and its resolution convicting him of malversation of public property defined and penalized in Article 217 in relation to Article 222 of the Revised Penal Code, and appreciating the mitigating circumstance of full restitution, imposing upon him the indeterminate sentence of two (2) years four (4) months and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum; the penalty of perpetual special disqualification, and a fine of P5,000.00, the value of the .38 Cal. Smith & Wesson Revolver, with Serial No. 879886.

We reverse.

The facts may be related as follows:

On February 2, 1988, petitioner was elected to and assumed the position of mayor of the municipality of Casiguran, province of Aurora.

Later that month, he received from Casiguran Barangay Captain[1] Antonio Benavidez one .38 Caliber Smith & Wesson Revolver, with Serial No. 879886. The gun was owned by and licensed to Ponciano Benavidez, an uncle of Antonio, who mortgaged it to him. Petitioner placed the gun in an attache case.

After about a week, petitioner together with his security men, went to Manila, and brought with them the attache case with the gun in it. On their return to the province, their car was stopped at a spot checkpoint in Quezon City, where Pat. Alfredo B. Villanueva of the Quezon City Police saw the revolver. On petitioner's instruction, his security men surrendered the gun to police officer Villanueva.

Back in the municipality of Casiguran, Ponciano Benavidez, the licensed owner of the gun claimed it from petitioner. The latter informed Ponciano that the gun was confiscated by the Quezon City Police.

On September 30, 1988, Ponciano Benavidez filed with the office of the Provincial Prosecutor of Aurora a complaint for theft against petitioner and Antonio Benavidez.

On December 13, 1988, Ponciano Benavidez filed with the Department of Local Government, an administrative complaint against petitioner for abuse of authority, ignorance of the law and conduct unbecoming of a public servant.

On January 20, 1989, the Provincial Prosecutor of Aurora dismissed the case for theft.

On April 6, 1989, complainant Ponciano Benavidez filed a complaint for theft against petitioner with the Office of the Ombudsman in Manila.

On August 21, 1990, during the investigation of the administrative case by the Sangguniang Panlalawigan of Aurora, complainant Ponciano Benavidez executed an affidavit of desistance acknowledging that petitioner had paid the value of the gun, and withdrawing the administrative case and the criminal case he filed against petitioner with the Ombudsman.

On August 22, 1990, the Sangguniang Panlalawigan approved a resolution dismissing the administrative case against petitioner.

On March 9, 1992, the Ombudsman approved the filing by Special Prosecution Officer Prospero G. Pelayo of an information against petitioner for malversation of public funds, which was duly filed on March 12, 1992, with the Sandiganbayan, Manila.

On March 30, 1992, the Sandiganbayan issued a warrant of arrest. On March 30, 1992, petitioner posted a cash bail of P20,000.00, which he deposited with the provincial treasurer of Aurora, duly approved by Regional Trial Court Judge Filemon N. Tan of Baler, Aurora.[2]

Upon arraignment on June 1, 1992, before the Sandiganbayan, First Division, petitioner entered a plea of not guilty, and accordingly, the court scheduled the case for pre-trial conference.

Meantime, on or about August 14, 1992, petitioner was able to contact Pat. Villanueva in Camp Karingal, Quezon City. The latter said that he returned the gun to Patrolman Orgas, one of petitioner's security men on the very next day after he had confiscated it. Unfortunately, Pat. Orgas did not inform petitioner about the recovery of the gun, and, at the time Villanueva so informed petitioner, Pat. Orgas had died.

At the pre-trial conference held on August 28, 1992, the prosecution and the accused (petitioner herein) assisted by counsel de parte, entered into a stipulation of facts signed by them, as follows:

- At all times relevant to this case, the accused was the Mayor of the Municipality of Casiguran, Aurora;
- That in the exercise of his functions as Mayor, the accused had the occasion to confiscate one .38 caliber Smith & Wesson revolver with Serial No. 879886 from Barangay Captain Antonio Benavidez;
- This weapon was actually owned by Ponciano Benavidez, the value of which the parties have not agreed upon;
- That the accused confiscated this weapon in the performance of his official functions and was, therefore, in custody thereof in his capacity as such;
- That demand was made from the accused by Ponciano Benavidez sometime in June of 1988 to produce the above-mentioned firearm but the accused failed to do so;
- That at a subsequent time, the accused and Ponciano Benavidez went to the offices of the Quezon City Police Department in search of this weapon;
- That there has been restitution of the value of the firearm by the accused to the complaining witness Ponciano Benavidez although there is disagreement as to the amount of the restitution;
- That the following affidavits were executed:
 - By complaining witness Ponciano Benavidez indicating his desistance from further prosecution thereof for reasons stated therein;
 - By Alfredo Villanueva of the Quezon City Police Department purporting to describe the circumstances under which he allegedly confiscated the weapon in question from the accused Mayor.

Further to the above stipulations, the Government now marks the following exhibit which is admitted by the accused:

Exhibit "A" - a xerox copy of the License to Carry Firearm No. 0188490, issued by Necesitas Katigbak of the Firearm and Explosives Unit, to Ponciano Benavidez involving .38 caliber Smith & Wesson revolver with SN 879886.

The accused for his part has marked the following exhibits:

Exhibit "1" - The Order of the Fiscal dated January 20, 1989, dismissing the charge of Theft, which is Annex "1" to the Supplemental Affidavit;

Exhibit "2" - The administrative complaint filed by the complaining witness dated December 13, 1988, which is Annex "2" to the Supplemental Affidavit;

Exhibit "3" - The Complaint for the filing of the case before the Ombudsman on April 6, 1989, which is Annex "3" to the Supplemental Affidavit;

Exhibit "4" - The investigation before the Sangguniang Panlalawigan dated August 21, 1990 at Baler, Aurora, wherein the owner of the gun submitted his affidavit of desistance and admitting therein that he was paid for the loss of the gun, which is Annex "4" to the Supplemental Affidavit;

Exhibit "5" - the Affidavit of Desistance executed by the owner of the gun dated August 21, 1990, marked as Annex "5" to the Supplemental Affidavit, wherein the owner of the gun admitted that he verified the loss of the gun to be true and also admitted that the equivalent amount in cash and in kind for the .38 caliber revolver was paid to him, for which he promised to dismiss the criminal case and the administrative case.

Exhibit "6" - the Minutes of the Sangguniang Panlalawigan of Aurora dated August 22, 1990, which decided to dismiss the administrative case, which is marked as Annex "6" to the Supplemental Affidavit;

Exhibit "7" - the Resolution of the Investigating Fiscal for the Ombudsman dated February 24, 1992, which is marked as Annex "7" to the Supplemental Affidavit;

Exhibit "8" - the Resolution of the Ombudsman, which is marked as Annex "8" to the Supplemental Affidavit;

Exhibit "9" - a copy of the Order of Arrest issued by the Sandiganbayan, marked as Annex "9" to the Supplemental Affidavit;

Exhibit "10" - the payment of the Bond for the provisional release of the accused, marked as Annex "10" to the Supplemental Affidavit;

Exhibit "11" - the Joint Affidavit of the Chairman of the Sangguniang Panlalawigan and a certain Angelito Salamera stating that they were present when payment was made for the gun to the owner, which is marked as Annex ""11" to the Supplemental Affidavit;

Exhibit "12" - the Affidavit executed by Alfonso Villanueva dated August 14, 1992, wherein he admitted that he had confiscated the gun at a checkpoint in Quezon City, which is marked as Annex "12" to the Supplemental Affidavit;

Exhibit "13" - the Affidavit executed by Antonio Benavidez dated July 30, 1989, which is marked as Annex "13" to the Supplemental Affidavit.

On June 30, 1993, the prosecution formally presented as its evidence Exhibit "A"[3] and upon the admission thereof, rested its case.

On the other hand, the defense presented two (2) witnesses including petitioner.

After the testimony of the witnesses on July 21, 1993, the court gave the defense counsel ten (10) days to formally offer his evidence in writing. In time, the defense formally offered its exhibits, and on September 6, 1993, the court admitted all exhibits except Exhibits 11 and 13, which were rejected for being hearsay.

On February 17, 1995, more than a year after the case was submitted for decision, the Sandiganbayan promulgated its decision, the decretal portion of which is narrated in the opening paragraph of this opinion.

On March 3, 1995, petitioner filed a motion for reconsideration of the decision; however, on July 5, 1995, the Sandiganbayan denied the motion.

Hence, this appeal.

On October 4, 1995, the Court required respondent to file its comment on the petition. On January 4, 1996, the Office of the Special Prosecutor filed its comment on the petition for review. On January 30, 1996, the Solicitor General also filed his comment.

We give due course to the petition.

To begin with, petitioner is charged with malversation under Article 217 in relation to Article 222 of the Revised Penal Code, providing as follows:

"Article 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 of 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 200 pesos but does not exceed 6,000 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 6,000 pesos but is less than 12,000 pesos.

"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, approved June 12, 1954)."

"Article 222. Officers included in the preceding provisions. - The provisions of this chapter shall apply to private individuals who, in any capacity whatever, have charge of any insular, provincial or municipal funds, revenues, or property and to any administrator or depository of funds or property attached, seized or deposited by public authority, even if such property belongs to a private individual."

One essential element of the crime of malversation is that a public officer must take public funds, money or property, and misappropriate it to his own private use or benefit. There must be asportation of public funds or property, akin to the taking of another's property in theft. The funds, money or property taken must be public

funds or private funds impressed with public attributes or character for which the public officer is accountable.

In this case, Antonio Benavidez voluntarily turned over the gun, a .38 caliber Smith & Wesson revolver, to petitioner mayor of the town of Casiguran, Aurora. Antonio surrendered the gun to the mayor. The gun was duly licensed. It was not seized or confiscated. Antonio obtained possession of the gun from Ponciano Benavidez, an uncle of his, who was the owner and licensee of the gun. Ponciano mortgaged it to Antonio.

"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." [4]

The question may be asked: Did Antonio's surrender of the gun to petitioner mayor invest the gun with public character sufficient to consider the gun as public property for which the mayor is accountable? We believe not. There was no reason to surrender or confiscate the gun. It was duly licensed to Ponciano Benavidez. The license is not transferable. Antonio could not validly possess the gun. He should have returned the gun to Ponciano, the licensed owner or surrendered it to the local police or to the Constabulary Provincial Commander. By turning over the gun to petitioner mayor, the gun did not become public property because it was not intended for public use or purpose nor was it lawfully seized. The gun continued to be private property, that is why the gun owner rightfully asked for its return to him, not to be turned over to the public coffer or treasury. Petitioner's failure to return the gun after demand by the private owner did not constitute a prima facie evidence of malversation. The property was private and the one who demanded its return was a private person, not a person in authority. The presumption of conversion will not apply.

A respected author in Criminal Law wrote "Malversation can only be committed by a public official who has charge of public funds or property by virtue of his official position. A public official not responsible for public funds or property and without authority to safeguard the same can not be convicted of malversation." [5]

What is more, the gun was confiscated by a police officer at a checkpoint in Quezon City. The policeman should have turned over the confiscated gun to the Constabulary Firearm and Explosive Unit, in Camp Crame, Quezon City. Instead, he returned the gun to a security aide of petitioner mayor, as a "favor" to the mayor. The security aide died in the meantime, and, apparently, the gun got lost. Assuming that the loss was due to petitioner's fault or negligence, he is not criminally liable for malversation through negligence because there was no evidence of conversion of public funds or property to the use or benefit of the accused. The legal presumption of malversation created by a demand for restitution of public funds or property is not applicable because the gun was private property and a public officer entitled to its possession did not make the demand for its return.

"The presumption takes the place of affirmative proofs showing the actual conversion. It obviates the necessity of proving acts of conversion; a thing most extremely difficult to do. If in a particular case a demand was made upon an accountable public official to produce the funds in his custody and he failed to do so, the presumption thereby arising would render unnecessary further proof of conversion. The disappearance of public funds in the hands of the accountable public officer is prima facie evidence of its conversion." [6] Here, there is no presumption of conversion nor evidence of actual conversion.

Nevertheless, petitioner made restitution of the value of the gun to the private owner, Ponciano Benavidez. Obviously, petitioner did not malverse the gun by dolo or culpa to his private use or benefit.

One more point. Admittedly, there was no evidence submitted to the court of the value of the gun to enable the court to fix the penalty to be imposed on the accused. Assuming that petitioner malversed the gun, in malversation, the penalty for the offense is dependent on the value of the public funds, money or property malversed. In this case, the Sandiganbayan did not base the penalty on the minimum value of the gun in the absence of evidence of its true worth. It took judicial notice of its market value and estimated its "reasonable value" at P5,000.00. This is a grievous error.

The Sandiganbayan could not take judicial notice of the value of the gun. It must be duly proved in evidence as a fact. The court can not take judicial notice of a disputed fact. The court may take judicial notice of matters of public knowledge, or which are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.[7] Otherwise, the court must receive evidence of disputed facts with notice to the parties.[8] This is an innovation introduced in the Revised Rules of Evidence the Supreme Court adopted on July 1, 1989, which should not be unknown to the lower courts.[9] The new rule of evidence governs this case, since it was decided in 1995, six years after its effectivity.

WHEREFORE, the Court hereby REVERSES the appealed decision and resolution of the Sandiganbayan in its Criminal Case No. 17563, and ACQUITS the accused Fidel Salamera y Torres, with costs de oficio.

The Court orders the Sandiganbayan to forthwith cancel the cash bail of the accused, and immediately reimburse the amount to him.

SO ORDERED.

Davide, Jr., C.J., Melo, and Kapunan, JJ., concur.

[1] The correct term is Punong Barangay.

[2] Court approval of cash bail is not required.

[3] Xerox copy of the license to carry firearm issued to Ponciano Benavidez.

[4] Nizurtado vs. Sandiganbayan, 239 SCRA 33, 42.

[5] Chief Justice Ramon C. Aquino, The Revised Penal Code, 1987 Edition, Volume Two, p. 447.

[6] Aquino, op. cit. p. 458.

[7] Rule 129, Section 2, Revised Rules on Evidence.

[8] Idem., Section 3, Revised Rules on Evidence.

[9] Dean Antonio P. Coronel, Significant Changes in the Law on Evidence, 1989 ed., pp. 15-16.

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