

NICANOR E. ESTRELLA, PETITIONER, VS. THE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 125160. June 20, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari seeking reversal of the Decision[1] of the Sandiganbayan dated June 3, 1996, in Criminal Case No. 12960, convicting petitioner Nicanor E. Estrella of the crime of malversation of public funds as defined and penalized under Article 217(4) of the Revised Penal Code.

On July 1, 1975, petitioner was appointed as Municipal Cashier[2] in the Office of the Municipal Treasurer, Isulan, Sultan Kudarat, with a bond in the amount of P28,000.00.[3] Per Audit Assignment Order No. LGAD 86-1 dated January 28, 1986 issued by the Commission on Audit (COA), Regional Office XII, he was audited of his cash and accounts for the period from March 18 to 24, 1986 only.[4] For reasons unknown, the cash and accounts of the petitioner were not audited for the period from July 1, 1975, the date of his appointment, up to March 17, 1986.[5]

Based on the official receipts for the period from February 7, 1986 to March 18, 1986 submitted by the petitioner during the audit examination,[6] petitioner apparently had daily collections amounting to P247,753.28.[7] Under office rules, petitioner was supposed to turn over the collections to Municipal Treasurer Jose B. Galvez, but he failed to do so since Galvez was then on leave of absence. As a recourse, petitioner should have deposited his collections with the depository bank of the municipality but he likewise neglected to do.[8]

During the audit examination, petitioner produced the following:

Cash on hand P46,756.00[9]

Payrolls/vouchers 65,539.83[10]

Cash advances 65,182.95[11]

Fully paid payrolls/vouchers 68,692.91[12]

Voucher No. 61 3,977.28[13]

TOTAL P250,148.97

The audit team credited the amount of P250,148.97 against his cash collections amounting to P247,753.28, hence, petitioner incurred no shortage. The remaining amount of P2,395.69[14] was carried over and deducted from his total cash advance.

Furthermore, the audit examination disclosed that from March 31, 1979 to December 3, 1985, petitioner made a total cash advance of P220,804.25.[15] The cash advance of P14,025.00[16] given to the driver of Municipal Treasurer Galvez was included in petitioner's accountability because it was the latter who granted it. Likewise, the

amount of P15,000.00[17] used to pay the salaries of the municipal employees, which petitioner borrowed from Mrs. Leonarda Panceras, in-charge of the Special Educational Fund, was also charged to his cash advances. All in all, petitioner received cash advances totalling P249,829.25.

Of the P249,829.25, petitioner was able to liquidate on November 20, 1985 the amount of P29,083.57[18] only. The amount of P2,395.69 resulting from the liquidation of petitioner's cash collections was added to P29,083.57, thus, petitioner's accountability was reduced to P218,349.99.[19]

Consolidated and presented in tabulated form, petitioner's accountability appears as follows:

ACCOUNTABILITY CASH

COLLECTIONS CASH

ADVANCES

P247,753.28 P220,804.25

14,025.00

15,000.00

TOTAL

ACCOUNTABILITY P247,753.28 P249,829.25

CREDITS TO

ACCOUNTABILITY:

a. Fully paid payroll/vouchers 68,692.91

b. Voucher No. 61 3,977.28

Cash Items and Cash on
Hand Produced during the
Examination

a. Payroll/vouchers 65,539.83

b. Cash advances 65,182.95

c. Cash on hand 46,756.00

Liquidation under 12,085.39

OR No. 5975542 9,500.00

7,498.18

TOTAL CREDIT TO

ACCOUNTABILITY 250,148.97 29,083.57

SHORTAGE 0 220,749.68

Less P2,395.69[20] and 2,395.69

TOTAL SHORTAGE 0 P218,349.99[21]

Petitioner admitted the accuracy of these different amounts when he certified them to be correct and signed the Report of Cash Examination, List of Cash Items Payroll and Vouchers and the List of Allowed Cash Advances.

Thereafter, the audit team from the Commission on Audit submitted its audit report to the Regional Director, Commission on Audit, Regional Office XII.

On April 11, 1986, State Auditor Binangon served a letter of demand[22] on the accused who acknowledged receipt thereof, setting forth the findings of the audit team particularly the shortage and demanded from the petitioner immediate production of the missing funds and a written explanation within 72 hours why the shortage occurred. In the said letter, petitioner was officially informed of his shortage in the amount of P222,327.24 which was stated in the original Report of Cash Examination[23] but which was adjusted in the amended Report of Cash Examination[24] dated June 11, 1986 by crediting him the amount of P2,395.69,[25] thereby reducing his accountability to P218,349.99.

After establishing the amount of the shortage as reflected in Exhibit "D", the OIC Municipal Treasurer submitted his progress report demonstrating further restitution of petitioner's disallowed cash advances and vouchers in the amount of P14,406.00 and P12,303.00 or a total of P26,709.00,[26] thereby further reducing his liability to P191,640.99. While petitioner admitted his accountability to be only P64,538.95, he doubted the accuracy of the said amount for the reason that in his perception, his liability was allegedly between P30,000.00 and P40,000.00 only.[27] Resultantly, petitioner was charged with malversation of public funds in the Information filed with respondent Sandiganbayan, allegedly committed as follows:

That on or about March 18, 1986, or sometime prior or subsequent thereto, in the municipality of Isulan, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Municipal Cashier in the above-stated municipality, and as such is accountable and responsible for public funds entrusted to him by reason of his position, with grave abuse of confidence and taking advantage of his public position as such, did then and there wilfully, unlawfully and feloniously misappropriate, embezzle and take away from said public funds the total amount of Two Hundred Eighteen Thousand Three Hundred Forty-nine Pesos and 99/100 (P218,349.99), Philippine Currency, which is misappropriated and converted to his own personal use, to the damage and prejudice of the government in the aforesaid amount.

Contrary to law.[28]

Duly arraigned on January 13, 1989, petitioner Nicanor E. Estrella pleaded "Not Guilty" to the charge.[29] After the prosecution had rested its case, petitioner filed a "motion to be allowed to file a demurrer to evidence" which was opposed by the prosecution. Respondent court denied the said motion. On May 20, 1995, petitioner again filed a "motion and/or manifestation" for the dismissal of the case for lack of merit. When the incident was heard, petitioner's counsel admitted in open court that the motion and/or manifestation was "in the nature of a demurrer to evidence", hence, pursuant to Sec. 15, Rule 119 of the Rules of Court, petitioner effectively waived his right to present evidence and submitted the case for decision based on the evidence presented by the prosecution. The Sandiganbayan rendered its decision convicting petitioner, the dispositive portion of which reads:

WHEREFORE, the Court finds Nicanor E. Estrella guilty beyond reasonable doubt as principal of the crime of malversation penalized under Par. 4, Article 217, Revised Penal Code.

There being no modifying circumstances and applying the Indeterminate Sentence Law, the Court imposes on the accused the indeterminate penalty from TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of reclusion temporal as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, the fine equal to TWO HUNDRED EIGHTEEN THOUSAND THREE HUNDRED FORTY NINE PESOS AND NINETY-NINE CENTAVOS (P218,349.99), the amount malversed, and perpetual special disqualification.[30]

Hence, this petition.

Petitioner states five (5) assigned errors, to wit:

I. The Sandiganbayan gravely erred in not holding that the Cash Examination Report dated March 18, 1986 (Exhibit B for the prosecution) on the basis of which petitioner was said to have allegedly incurred shortage in the amount of P218,349.99 is palpably wrong therefore invoking reasonable doubt accused should be freed of criminal culpability.

II. The Sandiganbayan gravely erred in not clearly and unequivocally holding to prevent double billing or double payment that there are two (2) distinct kinds or classes of money accountability petitioner has to clear or liquidate, namely: 1) Cash collections, from market fees, stall rentals, real estate tax collections, etc. and, 2) Cash Advances, for salaries of municipal employees, gasoline, maintenance of the municipality, etc. in the amount of P247,753.28 and P249,829.25 respectively.

III. The Sandiganbayan erred in not holding that the collections in the total amount of P247,753.28 has been fully liquidated or turned over to the municipal coffers of Isulan as evidenced by the prosecution's own Exhibits D-6-B to D-6-S, Liquidation Receipts issued by the Municipal Treasurer of Isulan, in favor of the Municipal Cashier.

IV. The Sandiganbayan erred in not holding that in carrying over and reflecting the collections still as a liability in the Cash Examination Report (Exhibit B) and charging against it paid payrolls, vouchers is totally wrong since this would result in double billing or double entry.

V. The Sandiganbayan erred in not charging against Cash Advances all paid payrolls, vouchers, cash on hand and as a consequence clear petitioner of such advances.

Otherwise stated, the basic issue is this: Whether or not the Sandiganbayan erred in finding petitioner guilty beyond reasonable doubt of the crime of malversation.

Petitioner vigorously opposes the Report of Cash Examination disclosing that he is still liable for cash collections, averring it is intrinsically wrong. According to him, the audit team erred in crediting paid payrolls/vouchers, cash on hand or allowed cash item against his accountability for cash collections considering that his cash collections were already liquidated. His basis was the prosecution's own evidence, the 18 receipts[31] amounting to P235,070.99 issued by the Municipal Treasurer for the liquidation of his daily collections.

As shown in the Report of Cash Examination, there are two kinds of money obligations that petitioner has with the Municipal Government of Isulan, Sultan Kudarat. They are cash collections and cash advances. A cardinal principle in accounting is that fully paid payrolls and vouchers should be credited to cash advances.[32]

In the case at bar, the audit team admitted that they credited the fully paid vouchers/payrolls in the amount of P68,692.91 and voucher No. 61 in the amount of P3,977.28 or a total of P72,670.19 against petitioner's cash collections as evidenced by the Report of Cash Examination[33], duly signed[34] by petitioner. Likewise, the amount of P177,478.78 representing the cash on hand and allowed cash items, produced by petitioner during the audit examination were added to P72,670.19 by the audit team to fully liquidate petitioner's cash collections. It is apparent therefore that petitioner incurred no shortage in his cash collections.

However, from the testimony of the lone prosecution witness, State Auditor Binangon, it appeared that petitioner was able to liquidate his money obligation only during the time of the audit examination. To quote her testimony:

"PJ Garchitorena

If Galvez received that amount from the accused why are we going to hold the accused responsible for that amount?

A Your Honor these liquidations were only submitted at the time of the audit, so the issuance of the receipts

were only made at the time of the audit but the dating correspond to the daily liquidation by Mr. Estrella.

Q Are you saying that Mr. Galvez did not receive the sum?

A Only at the time of the audit.

Q Why? Your audit was in March while the receipt was February?

A Because Mr. Galvez was on leave. He only turned over these including the cash on hand at the time of the liquidation.

Q In other words are you saying that Mr. Galvez was not there so he could not receive the money?

A Yes, your Honor.

Q When Mr. Galvez reported for work, Mr. Estrella turned over the money?

A Yes, sir.

Q Is that wrong? To whom did you expect Mr. Estrella to turnover the money he has if Mr. Galvez was not there?

Who is Mr. Galvez by the way?

A The Municipal Treasurer.

Q To whom does the cashier turn over his collection?

A To the Municipal Treasurer.

Q If the Municipal Treasurer is not there what will the cashier do with the money he has?

A He is supposed to deposit the money because he is authorized to deposit also.

Q He did not deposit the money?

A No, your Honor."^[35]

On the other hand, petitioner contends that it was his practice to remit his collections to the Municipal Treasurer every other day or daily. Due to the trust he reposed on the Treasurer he did not ask receipt for every remittance that he made. Petitioner further contends that he opted to rest his case in a Demurrer to Evidence considering that during the Pre-trial of the said case, he adverted to the prosecution's evidence, particularly, Exhibits "D-6-B" to "D-6-S", as evidencing the liquidation of his cash collections.^[36]

After a careful scrutiny of Exhibits "D-6-B" to "D-6-S", it appeared that the testimony of the lone prosecution witness was more credible than that of petitioner's declaration. The receipts representing the liquidation for cash collections supported the testimony of the prosecution witness. Said receipts were not chronologically issued as demonstrated in the following:

Receipt No. Date Issued Exhibit No.

5573641 February 8, 1986 Exhibits "D-6-B"

5976423 February 8, 1986 Exhibits "D-6-C"

5976424 February 8, 1986 Exhibits "D-6-D"

5852401 February 12, 1986 Exhibits "D-6-E"

5852411. February 17, 1986 Exhibits "D-6-F"
5852404 February 18, 1986 Exhibits "D-6-G"
5852417 February 19, 1986 Exhibits "D-6-H"
5852413 February 28, 1986 Exhibits "D-6-I"
5852405 February 28, 1986 Exhibits "D-6-J"
5852406 February 28, 1986 Exhibits "D-6-K"
5852410 February 28, 1986 Exhibits "D-6-L"
5852414 March 17, 1986 Exhibits "D-6-M"
5852402 February 17, 1986 Exhibits "D-6-N"
5852403 March 19, 1986 Exhibits "D-6-O"
5852415 March 19, 1986 Exhibits "D-6-P"
5852409 February 20, 1986 Exhibits "D-6-Q"
5852412 February 28, 1986 Exhibits "D-6-R"
5852416 March 18, 1986 Exhibits "D-6-S"

As shown in the above mentioned list, Receipt No. 5852402 was issued on February 17, 1986 while Receipt No. 5852403 was issued on March 19, 1986. The irregularity in the issuance of the receipts evidencing remittances of cash collections arose when succeeding numbers of Receipt No. 5852403 were issued ahead of the same. If it is true that petitioner really made remittances of his cash collections at the end of the day, the irregularity would not have happened. It was for this reason that Municipal Treasurer Jose S. Galvez of Isulan, Sultan Kudarat was also prosecuted before the respondent court for violation of PD 1445, Section 89.[37]

As stated earlier and based on the Report of Cash Examination, the fully paid payrolls and vouchers were credited to petitioner's accountability for cash collection. The prosecution witness, as member of the audit team, explained their procedure or reason in this manner, thus:

PJ GARCHITORENA

Madam, I am not asking you what he did. He does not govern your rendition of his account. You obey the rules and you follow the regulations for your preparation of the account, is that not so?

A Yes, your Honor.

Q Now, collections cannot be disposed of by the cashier?

A Yes, your Honor.

Q Collections are supposed to be turn over to the treasurer?

A Yes, your Honor.

Q As a matter of fact that is what he did in Exhibit D-6, from February 8 to March 18 he turned over a total of P247,753.28, is that not so?

A Yes, your Honor, but

Q Don't say but ... Therefore, your crediting of payrolls and other vouchers against collection is incorrect. Precisely, Mr. Estrella in his Report, in his liquidation, in his turnover, Exhibit D-6 gives you the exact amount of his collection - P247,753.28 and you should have closed the account of collections with his turnover under Exhibit D-6.

Mr. Estrella knows what the law is; Mr. Estrella follows the law with respect to his collection and he turned them over and liquidated them accordingly. You, however, decided to apply against collections, something totally inappropriate. You applied payrolls and other disbursements and that is why your report is in confusion.

Would you like to say something?

A Yes, your Honor, because when he liquidated his collection that was already attached to his liquidation. So, if he remove the paid payrolls, and vouchers, the same he would be incurring cash shortage out of his collection.

Q He will not because he turned over to you P247,753.28, Exhibit D-6 is a complete liquidation of that amount.

A Your Honor, may I say something. The liquidation was receipted based on the total but then the amount he turned over to the treasurer, there was already deduction corresponding to the vouchers attached. So the Treasurer added the cash plus the paid payrolls and other vouchers equals the total collections. So, that is how it was presented during the audit.[38]

Q He returned to you the cash but you did not recognize it as a returned amount. All of these receipts represent cash turned over by the accused to the treasurer?

A (no answer)

Q These amounts represented by receipts?

A Yes, sir.

Q And these are receipts representing cash?

A Supposed to be your Honor.

Q You have doubts?

A I have no doubts, your Honor, because I have seen, during the liquidation that when he turned over the collections it is not the cash as reflected there. There was part cash and part vouchers.

Q Why did the treasurer issue the receipts?

A He acted as if he was the one disbursing already with the collections.

Q So, why did you not just follow... If this is a liquidation then there was a turnover. As it is right now everybody is confused wondering what happened.

So, he liquidated his collections, cash and according to you with vouchers. But if turned over this amount then he must have gotten the rest of the money somewhere else because this is supposed to

A Yes, sir.

Q So, you followed this mode of liquidation and wind up(interrupted)

A Your Honor, that is supposed to be a violation but if we did not consider that we will be going back even to the previous audit because that is already the practice

Q How did you determine that the disbursement under that cash advance were properly chargeable to that account?

A We only considered the documents, if they are fully documented.

Q Why did you decide that this should be charged against cash advances?

A Our rule there if ever, we had disallowed those supporting documents to be part of his liquidation in his collection, and applied that as cash advances, the same he will be incurring cash shortage from his collection because he has nothing[39]

In short, the audit team merely followed the procedure initiated by the petitioner. The petitioner included the fully paid payrolls and vouchers in liquidating his cash collections. In the same way, the Municipal Treasurer receipted the liquidation based on the sum total of cash and the paid payrolls and vouchers. If we are to conform with the opinion of the petitioner to the effect that the fully paid payrolls and vouchers totalling P72,670.19 should be credited to his cash advances, it would simply mean that the same amount should likewise be deducted from his cash collections. In the same way that if we are to credit the amount of P177,478.78[40] from his cash advances, the amount of P175,083.09 should be deducted from his collections, hence, petitioner's shortage would still be the same. As pointed out by the respondent court, and we quote:

"If, as contended, the turn over or liquidation of the daily collections of P247,753.28 was applied to the accused's accountability for cash advances, then his accountability for daily collections would remain outstanding while his accountability for cash advances would be reduced pro tanto by the same amount of P247,753.28. Consequently, whether one or the other was done, the result would be the same."[41]

Article 217 of the Revised Penal Code holds liable for malversation a public officer who shall appropriate public funds or property for which he is accountable, 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. Furthermore, 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.

The elements of malversation of public funds are (a) the offender is a public officer, (b) he had custody or control of the funds or property by reason of the duties of his office, (c) these funds or property were public funds or property for which he was accountable, and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.[42] Anent the last element, we have held that to justify conviction for malversation of public funds, the prosecution has only to prove that the accused received public funds or property and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for the disappearance of the same.[43] An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily.[44]

Petitioner was not able to produce the missing amount of P191,640.99; and neither was he able to explain his failure to produce that amount. Aside from petitioner's feeble attempt to shift the blame to the audit team, nothing in the records of this case supports his allegation that the audit team had committed an error in the Report of Cash Examination.[45]

WHEREFORE, the petition is DENIED and the decision of respondent Sandiganbayan is AFFIRMED in toto.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] First Division, penned by Associate Justice Jose S. Balajadia and concurred in by Presiding Justice Francis E. Garchitorena and Associate Justice Minita V. Chico-Nazario; Rollo, pp. 29-52.

[2] Exhibit "A".

[3] Exhibit "A-1".

[4] Exhibit "F".

[5] TSN dated November 10, 1994, pp. 4-5.

[6] The audit team was composed of Jovita R. Binangon, as team leader and Elizabeth S. Dizon, Crisanto N. Alvarez, Conrado T. Estimo and Nilo Romano, as members, Exhibits "D-6".

[7] Exhibits "D-6".

[8] TSN dated November 10, 1994, p. 13.

[9] Exhibit "D".

[10] Exhibit "D-3".

[11] Exhibit "D-4".

[12] Exhibit "D-8".

[13] Exhibit "D".

[14] The difference between P250,148.97 (amount produced by petitioner during the audit examination) and P247,753.28 (cash collections)

[15] Exhibit "D-7".

[16] TSN dated May 19, 1994, p. 23; Exhibit "D-7"

[17] Ibid.

[18] Exhibit D-9.

[19] The difference between P249,829.45 and P31,479.26.

[20] This constitute the remaining amount credited to the cash collections and which was carried over to his cash advances.

[21] The civil liability of petitioner was further reduced to P191,640.99; See Exhibit "H-1"

[22] Exhibit "C".

[23] Exhibit "B".

[24] Exhibit "D".

[25] Voucher No. 61.

- [26] Exhibit "H-1"; TSN dated May 19, 1994, p. 28.
- [27] Exhibit "E".
- [28] Rollo, p. 31.
- [29] Record, p. 28.
- [30] Rollo, p. 51.
- [31] Exhibits "D-6-B" to "D-6-S".
- [32] Sec. 179 of Government Accounting and Auditing Manual, Vol. I.
- [33] Exhibit "D".
- [34] Exhibit "D-2".
- [35] TSN dated November 10, 1994, pp. 12-13.
- [36] Rollo,, pp. 15-16.
- [37] Granting of cash advances to the accused without first requiring liquidation of prior ones; Rollo, p. 31.
- [38] Underscoring supplied.
- [39] TSN dated November 10, 1994, pp. 25-28.
- [40] Said amount was added to P72,670.19 by the audit team to fully liquidate petitioner's cash collections.
- [41] Rollo, p. 354.
- [42] People v. Pepito, 267 SCRA 358, 368 (1997) citing Agbanlog v. People, 222 SCRA 530,536-537 (1993)
- [43] People vs. Pepito, 267 SCRA 358, 368.
- [44] Navallo v. Sandiganbayan, 234 SCRA 175, 185 (1994); Villanueva v. Sandiganbayan, 200 SCRA 722, 734.
- [45] Exhibit "D".

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