

JUAN A. RUEDA, JR., PETITIONER, VS. HONORABLE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 129064. November 29, 2000

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case is an appeal via certiorari from the decision of the Sandiganbayan[1] finding petitioner Juan A. Rueda, Jr. guilty of malversation of public funds, and sentencing him to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, to pay a fine of P107,299.02 with subsidiary imprisonment in case of insolvency,[2] and to suffer perpetual disqualification from holding any public office, and to pay the costs, and resolution[3] denying reconsideration.

The Charge

On April 19, 1991, Special Prosecution Officer I Gregorio G. Pimentel, Jr., Office of the Ombudsman filed with the Sandiganbayan an information charging petitioner Juan A. Rueda, Jr., with malversation of public funds, defined and penalized under Article 217 of the Revised Penal Code, to wit:

"That on or about the period of February 8, 1989 to September 20, 1989, in Tigaon, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Municipal Treasurer of Tigaon, Camarines Sur, and as such was accountable for all public funds collected and received by him by reason of the duties of his office, taking advantage of his official position and with grave abuse of confidence, did then and there, willfully, unlawfully and feloniously misappropriate, embezzle and convert to his own personal use and benefit the total sum of P107,299.02, Philippine Currency, to the damage and prejudice of the Philippine government in the amount aforesaid." [4]

Upon arraignment on November 29, 1991, petitioner entered a plea of not guilty.[5] Trial ensued.

The facts, as found by the Sandiganbayan,[6] are as follows:

At times material hereto, petitioner Rueda was the municipal treasurer of Tigaon, Camarines Sur. On September 20, 1989, a team of state auditors, headed by Amparo O. Albeus, conducted an audit examination of the accountabilities of petitioner Rueda as municipal treasurer of Tigaon, Camarines Sur, covering the period February 8, 1989 to September 20, 1989. As a result of the audit, it was assumed that petitioner had a "cash shortage" of P107,299.02 (Exh. "A-2"). The corresponding report of cash examination was thereafter accomplished. When confronted therewith, petitioner affixed his signature (Exh. "A-1") on the certification on the dorsal portion of the report to the effect that his accountability for the funds of the municipal government of Tigaon, Camarines Sur was correctly stated.

On October 3, 1989, the auditors sent a formal written demand to petitioner Rueda, requiring him to immediately produce the sum of P107,299.02, representing the "shortage" on his accountabilities as municipal treasurer of

Tigaon, Camarines, Sur, and to explain in writing within seventy-two (72) hours why the shortage occurred (Exh. "B"). Notwithstanding receipt of the letter (Exh. "B-1"), petitioner failed to have the said amount forthcoming or to tender his written explanation why the shortage occurred.

In his defense, petitioner Rueda disclaimed any criminal liability on the ground that the assumed "shortage" was the result of unliquidated cash advances made by several municipal officials and employees of Tigaon, Camarines Sur, spanning the period covered by the audit as evidenced by various "chits" or "vales" (Exhs. 11-15), and expenses of the municipal government of Tigaon as evidenced by several disbursement vouchers (Exhs. 16, 17, 18, 20, 21, 25, 26, 27, 28, 29 and 30).

Petitioner Rueda declared that the municipal officials and employees took the cash advances from the cash collections of the municipal collectors before the cash collections, in the total amount of P41,234.71, were turned over to him as municipal treasurer. What they turned over to him were the "chits" and "vales" evidencing such cash advances. Although he never tolerated the practice and had verbally warned the municipal officials and employees from making those cash advances, they continued to do so.[7]

Petitioner Rueda stressed that the cash advances were made with the consent of the municipal mayor, and had been the practice in the municipality of Tigaon long before he assumed office as municipal treasurer. He would later on deduct the cash advances made from their respective salaries in installment, and after they were paid, he would turn over the amount to the office of the municipal treasurer. With respect to the subject "chits" and "vales", petitioner Rueda declared that after the same were paid, he turned over the amount to the office of the municipal treasurer who then credited those payments as "restitution" of the shortage on his total cash accountability.[8] Thus, the "debtors" themselves liquidated the cash advances and petitioner's accountabilities had been fully restituted before the start of the preliminary investigation in the office of the Ombudsman.

A day before the state auditors from the Commission on Audit conducted an audit examination of his cash accountabilities, the internal auditors from the provincial treasurer's office conducted a similar examination. This group of internal auditors advised him not to bring the matter about "vales" or cash advances to the COA audit team because they would only disallow them for lack of supporting documents. This is the reason why he did not present the disbursement vouchers in the course of the audit conducted by the State Auditors on September 20, 1989.

After the audit of September 20, 1989, petitioner Rueda began completing the supporting documents of those disbursement vouchers. Upon completion of those "vales" and "chits" as supporting documents, he submitted the same together with the disbursement vouchers to the in-charge-of office of the municipal treasurer, who credited the amounts reflected on those disbursement vouchers as "restitution" of the shortage on his total accountability.

Consequently, petitioner Rueda stated that as of July 11, 1990, before the start of the preliminary investigation in the Office of the Ombudsman, all his financial accountabilities had been fully restituted. The cash advances, in the form of "chits" and "vales" amounting to P41,234.71, had been wholly paid or redeemed by their respective debtors. The disbursement vouchers of P53,700.00 representing various legitimate expenses of the municipality of Tigaon, Camarines Sur and the collection deposits in the amount of P12,384.06 were all liquidated. The in-charge-of office of the municipal treasurer of Tigaon, Camarines Sur issued eight official receipts, for various amounts received from petitioner Rueda, to wit:

1. Official Receipt No. 0382089 dated 12/14/89 for P65,000.00
2. Official Receipt No. 0129158 (O) dated 12/29/89 for P618.56
3. Official Receipt No. 0382090 (N) dated 1/08/90 for P6,000.00
4. Official Receipt No. 0382091 (N) dated 1/08/90 for P12,000.00

5. Official Receipt No. 0382095 (N) dated 4/02/90 for P15,000.00
 6. Official Receipt No. 0382100 (N) dated 5/31/90 for P3,000.00
 7. Official Receipt No. 4846890 (P) dated 7/09/90 for P666.40
 8. Official Receipt No. 4833595 (P) dated 7/11/90 for P5,014.06
- Total P107,299.02

A certification dated July 11, 1990, signed by Mr. Francisco N. Briguera, in-charge-of office of the municipal treasurer of Tigaon, Camarines Sur, and verified and found correct by Melanio C. Alarcon, state auditing examiner (Exh. "9"), showed that petitioner Rueda had fully restituted the cash shortage discovered during the cash examination. As such, petitioner claimed innocence and therefore must be acquitted.[9]

On March 19, 1996, the Sandiganbayan (Third Division) promulgated its decision finding petitioner Rueda guilty beyond reasonable doubt of malversation of public funds, defined and penalized under Article 217 (4) of the Revised Penal Code, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered, finding the accused GUILTY beyond reasonable doubt, of the crime of Malversation of Public Funds, under paragraph 4 of Article 217 of the Revised Penal Code and considering the mitigating circumstance of full restitution of the amount malversed, and applying the Indeterminate Sentence Law, this Court hereby sentences the accused to suffer an indeterminate penalty of imprisonment for a period of TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY reclusion temporal, as maximum; to pay a fine of P107,299.02 with subsidiary imprisonment in case of insolvency, and to suffer perpetual special disqualification from holding any public office; and to pay the costs.

"SO ORDERED.

"Manila, Philippines, January 25, 1996."[10]

On March 29, 1996, petitioner filed with the Sandiganbayan a motion for reconsideration of the decision.[11]

However, on May 07, 1997, the Sandiganbayan found the motion not meritorious and denied the same.[12]

The Appeal

Hence, this appeal.[13]

Issues

- (1) Is petitioner liable for malversation of public funds due to a "shortage" of P107,299.02 which consisted of "chits" and "vales" evidencing cash advances from cash collections of the municipal collectors before these were turned over to petitioner municipal treasurer as part of his accountability?
- (2) Is he presumed to have put the "missing" public funds to his personal use or allowed others to take such funds when it is an admitted fact that the cash advances were given by the municipal collectors from their cash collections, not from funds in the custody of petitioner?

Petitioner submits that the Sandiganbayan erred:

- (1) In finding that the rulings in *Villacorta v. People*, 145 SCRA 425 [1986] and *Quizo v. Sandiganbayan*, 149 SCRA 108 [1987] do no apply to the case at bar as they have been reversed by the pronouncement in *Meneses v. Sandiganbayan*, 232 SCRA 441 [1994] which relied on the ruling in *Cabello v. Sandiganbayan*, 197 SCRA 94 [1991];
- (2) In rejecting petitioner's submission that the evidence must be appreciated under the rulings in *Villacorta* and *Quizo*, as the events occurred when the prevailing doctrines were the rulings in *Villacorta* and *Quizo*;
- (3) In not finding that he succeeded to overthrow the prima facie evidence of conversion/misappropriation

under Article 217 of the Revised Penal Code;

(4) In rejecting petitioner's explanation as regards the disbursement vouchers and collection deposits such that they do not make out a criminal offense.[14]

Actually, the issues really boil down to whether or not petitioner has incurred a "shortage" in his cash accountability as municipal treasurer of the municipality of Tigaon, Camarines Sur.

The Court's Ruling

We sustain petitioner's submissions primarily because he did not take or misappropriate or through abandonment or negligence, permit any other person to take or malverse public funds or property in his custody for which he is accountable. He did not put public funds to his "personal use". He was able to properly explain and account fully for his cash accountability of public funds upon demand by the auditors. The assumed "shortage" does not exist and in any event has been restituted in full.

Generally, the factual findings of the Sandiganbayan are conclusive on the Court. However, 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 the absence of evidence and are contradicted by evidence on record.[15] In these instances, this Court is bound to review the facts in order to avoid a miscarriage of justice.[16] The instant case falls within such exceptions.

Considering the evidence on record, we find that the Sandiganbayan convicted petitioner on probabilities and conjecture, not on hard facts duly established.[17] We are thus justified to re-examine, as we do, the evidence.

After an assiduous scrutiny, we find petitioner not guilty of malversation of public funds. The Sandiganbayan found that petitioner admitted his accountability and failed to have duly forthcoming his cash shortage in the amount of P107,299.02 with which he is chargeable, and that he did not tender the required written explanation as to why the shortage was incurred. His failure to do so instantly created a prima facie evidence pursuant to the last paragraph of Article 217 of the Revised Penal Code that he had put such missing funds to personal use.

We disagree. Petitioner did not admit any shortage. The mere fact that he signed the dorsal side of the report of cash examination is not an admission of "shortage". His signature was only evidence that he received a copy of the report. Thus, it is incorrect to say that petitioner admitted his shortage when he signed the audit report prepared by the audit team.[18] For one thing, he was made to sign it right away; for another, his signature only meant an acknowledgment that a demand from him to produce all his cash, money and paid vouchers had been made. It did not mean that he admitted any shortage. In fact, subsequent events showed that he had fully explained his accountability. Thus, he satisfactorily explained the shortage.[19] In other words, there was no direct evidence or proof that he put public funds to personal use.[20] When absence of funds was not due to personal use, the presumption is completely destroyed.[21] The taking or conversion of public funds for personal use must be affirmatively proved.[22] When there is no shortage, taking, appropriation, conversion or loss, there is no malversation.[23]

The crime of malversation of public funds is defined and penalized as follows:

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."

xxx xxx xxx

"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." [24]

The elements of malversation, essential for the conviction of an accused, under the above penal provision 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. [25]

"The felony involves breach of public trust, and whether it is committed through dolo or culpa the law makes it punishable and prescribes a uniform penalty therefor. Even when the information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves that mode of commission of the offense." [26]

"Concededly, the first three elements are present in this case. It is the last element, i.e., whether or not petitioner really has misappropriated public funds, where the instant petition focuses itself. In convicting petitioner, the Sandiganbayan cites the presumption in Article 217 of the Revised Penal Code that the "failure 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." The presumption is, of course, rebuttable. Accordingly, if the accused 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. This 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." [27]

"The prosecution, upon whose burden was laden the task of establishing by proof beyond reasonable doubt that petitioner had committed the offense charged, mainly relied on the statutory presumption aforesaid and failed to present any substantial piece of evidence to indicate that petitioner had used the funds for personal gain. The evidence submitted, just to the contrary, would point out that not a centavo of the so-called "missing funds" was spent for personal use x x x." [28]

In *Salamera v. Sandiganbayan*, [29] we emphatically declared that the 4th element requires "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."

We are convinced that the evidence in this case has not proved beyond reasonable doubt that petitioner is guilty of malversation of public funds.

We explain why. To begin with, there was no evidence of cash "shortage." The letter of demand dated October 3, 1989 (Exh. "B-1") to petitioner for him to produce immediately the "missing" funds in the total amount of P107,299.02 and to submit within seventy-two hours why the shortage occurred, states:

"x x x It was found that your cash was short of P107,229.02.

"This shortage was arrived at as follows:

"Accountability:

Balance per audit as of Sept. 20, 1989

Certified correct by you.

General Fund P165,078.78

Infrastructure Fund 39,904.77

Special Education

Fund 28,398.29

Trust Fund 10,983.84

Balgu Fund 33,128.60 P277,494.28

Credit to accountability:

Cash and valid cash items produced

by you and counted by us P170,195.26

Shortage

P107,229.02"[30]

The auditor's finding of a "cash shortage" is definitely wrong. In fact and under accounting principles, there is no cash shortage. The cash and other valid cash items were produced by petitioner and counted by the auditors in the total amount of P170,195.26. The amount is intact in cash. The assumed shortage of P107,229.02 represented "vales", "chits" and "disbursement vouchers" considered as part of the general fund. This is an auditing error. It is a generally accepted auditing principle that cash means "cash on hand or in bank." Standard text in accounting defines "Cash" as consisting of those items that serve as a medium of exchange and provide a basis for accounting measurement. To be reported as "cash," an item must be readily available and not restricted for use in the payment of current obligations. A general guideline is whether an item is acceptable for deposit at face value by a bank or other financial institution.

"Items that are classified as cash include coin and currency on hand, and unrestricted funds available on deposit in a bank, which are often called demand deposits since they can be withdrawn upon demand. Petty cash funds or change funds and negotiable instruments, such as personal checks, travelers' checks, cashiers' checks, bank drafts, and money orders are also items commonly reported as cash. The total of these items plus undeposited coin and currency is sometimes called cash on hand. Interest-bearing accounts, or time deposits, also are usually classified as cash, even though a bank legally can demand prior notification before a withdrawal can be made. In practice, banks generally do not exercise this legal right.

"Deposits that are not immediately available due to withdrawal or other restrictions require separate classification as 'restricted cash' or 'temporary investments.' They are not 'cash'."[31]

In short, there was no shortage on petitioner's cash accountability. "Evidence of shortage is necessary before there could be any taking, appropriation, conversion, or loss of public funds that would amount to malversation."[32] The law requires that the shortage must be clearly established as a fact that over and above the funds found by the auditors in the actual possession of the accountable officers, there is an additional amount which could not be produced or accounted for at the time of audit.

In this case, there was absolutely no shortage as to petitioner's cash accountability. The auditors mistakenly included as cash items collectibles in the form of "vales" and "chits" and "disbursement vouchers" for legitimate expenses of the municipality.

An accountable officer under Article 217 of the Revised Penal Code must receive money or property of the

government which he is bound to account for. It is the nature of the duties of, not the nomenclature used for, or the relative significance of the title to, the position, which controls in that determination.[33]

Based on this definition, to be held accountable the public officer must receive the money or property, and later fails to account for it. When a public officer is asked to account for the cash in his accountability, this necessarily means that he has to produce the cash in bills and coins and other cash items that he received. It does not include collectibles and receivables or even promissory notes.

Petitioner Rueda did not receive the money (cash), which he was supposed to produce or account for at the time of the audit.[34] In fact, the audit team found that sum of P170,195.26 intact in bills and notes. Nonetheless, the auditors declared a "shortage" because petitioner Rueda could not produce as cash items the collectibles and receivables in the form of "chits and vales" and disbursement vouchers for legitimate expenses of the municipality. This is an auditing error because the collectibles and receivables are not cash items. The money did not reach the hands of petitioner. Therefore, it is not part of his cash accountability.

The amount of P107,299.02, was divided as follows: (1) P41,234.71 representing the "chits and vales" taken by the municipal officials and employees from the municipal collections prior to the remittance of these cash collections to petitioner; (2) P53,700.00 representing the legitimate expenses of the municipality subject to liquidation; and (3) P12,384.06 unsettled cash collections.

With regard to the P41,234.71 cash advances, petitioner did not receive the cash nor gave the cash advances for they were taken from the cash collections of the municipal collectors before the cash collections were turned over to him.

"Q: The cash collections of the municipal collectors from which the chits and vales, from which the amount represented by the chits and vales are made by the municipal employees and officials, from the amount covered by those chits and vales were already turned over to you or not yet, when the chits and vales were made?

"A: They were not yet turned over to me, sir. The employees have their cash advances from the municipal collectors before their cash collections were turned over to me. So, I got only the chits or vales; the cash was not yet turned over to me."[35]

Clearly, petitioner Rueda did not receive the above-mentioned amount at the time of the audit.[36] In fact, no cash was ever given or turned over to petitioner. At any rate, the respective debtors, not the petitioner, wholly redeemed the cash advances and "vales" amounting to P41,234.71, to wit:[37]

"Q: Where are now those chits and/or vales covering those cash advances?

A: Those chits and vales were redeemed by the employees and then, some of them were redeemed by the employees and then, as I accumulated the amount, I turned it over, the cash, I turned it over to the In-Charge of Office and then, issued an official receipt for the amount and credited against my shortage as restitution.[38]

As heretofore stated, in *Salamera vs. Sandiganbayan*,[39] we ruled that one essential element 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. Hence, how can there be taking or misappropriation when the funds did not even reach the hands or custody of petitioner Rueda?

As regards the amount of P P53,700.00, these referred to legitimate expenses of the municipality. At the time of the audit, petitioner failed to present the vouchers for these legitimate expenses because they lacked documents in support of the vouchers, to wit:

"Q: You mentioned about these vouchers. What are these vouchers that you mentioned?

A: May I refer to my list, Your Honor.

AJ DEL ROSARIO:

The witness may refresh his memory.

"WITNESS: These vouchers, there are 11 of them, from the Will Print, one voucher from the printing realty taxes, tax declaration, I mean; and, another two vouchers from the same Will Print, for printing also the Real Tax Declaration; third voucher is from Angel Bongulto, cash advance for Manila to get the law books and references from the Supreme Court for the RTC, Branch 30, at Tigaon, Cam. Sur; one voucher is for Kagawad Redito Clariño, cash advance for seminar workshop for the municipal kagawad at Los Baños, Laguna; another voucher is for Orlando Asiado, cash advance for supporting the athletic uniform of the municipal team for the Summer Basketball Tournament; next voucher is for Hector Bongat, cash advance for constructing 50 pieces market stalls, and, next is Leo Cea, a cash advance for the summer basketball tournament referees; next voucher is for Mayor Eleonor Lelis, cash advance in going to Manila, with the INP Station Commander and 3 Patrolmen to get our Fire truck for the municipality; next voucher is for Leonida Peñaflor, a cash advance for the terminal leave of her deceased husband, my assistant municipal treasurer, Domingo Peñaflor; next voucher is for Arturo Pascua, cash advance for delivering sand and gravel for the cementing of a municipal street and the last is for Iñigo Zape, cash advance for COLA. These were the unsubmitted vouchers, sir.

Q: You said, you did not present these vouchers during the audit by the COA team because these lack supporting documents and you were advised by the internal audit team not to present them anymore because there will be, for sure, is lacking. [sic] Can you still recall what supporting documents were lacking to these vouchers, for which reason you did not present them, if you can still recall the supporting documents lacking?

A: Some of them lacks the canvass paper; some of them were partially paid but also lacking supporting papers, sir."[40]

After the audit, petitioner prepared the supporting documents that these vouchers lacked and turned them over to the in-charge-of office who replaced him, Mr. Francisco Briguera.[41]

Petitioner satisfactorily explained the unsettled cash collection deposits in the amount of P12,384.06. This amount represented the cash collections of the market collectors, which had been turned over to the invoicing officer of the treasury, Mrs. Delicias Galvante. During the audit examination, this amount had been reflected as unaccounted because it lacked some requirements, such as the labor payroll. It was only after the audit examination that the invoicing officer turned over the labor payroll corresponding to the amount of P6,000.00. The remainder of the P12,384.06 was given as cash advances in the form of "chits and vales," which had been taken from the collections, again, prior to its remittance to petitioner.

Hence, petitioner satisfactorily explained the cash "shortages" found in his accountability at the time of the audit examination. No portion of his cash accountability has been malversed by him or put to his personal use.[42]

In *Meneses vs. Sandiganbayan*,[43] the Court reiterated an earlier ruling in *Cabello v. Sandiganbayan*,[44] that the practice of disbursing public funds under the "vale" system is not a meritorious defense in malversation cases. The grant of loans through the "vale" system is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, which is punishable by law. To tolerate such a practice is to give a license to every disbursing officer to conduct a lending operation with the use of public funds.

However, the ruling in *Cabello* and *Meneses* cannot be applied to the case at bar. The circumstances obtaining in those cases are not present in the case at bar. An important moiety in the instant case is that petitioner did not grant the cash advances or "vales" to the municipal officials. They took the cash advances from the collections of

the municipal collectors. However, they restored or "liquidated" the amounts prior to the conduct of preliminary investigation before the office of the Ombudsman. The liquidation was done, not by petitioner, but by the respective debtors. "Liquidation simply means the settling of indebtedness." [45]

"Liquidation does not necessarily signify payment, and to liquidate an account, can mean to ascertain the balance due, to whom it is due, and to whom it is payable; hence, an account that has been liquidated can also mean that the item has been made certain as to what, and how much, is deemed to be owing." [46]

Neither can petitioner Rueda be considered guilty of passive malversation. He did not tolerate the practice of making cash advances by the municipal officials and employees. He warned them about the illegality of such practice. However, he was helpless about the situation because it was done with the consent of the municipal mayor. They were not indicted for malversation. Why? The prosecution did not explain. The Sandiganbayan did not even inquire. Instead of the cash collections being remitted to petitioner, pieces of paper called "chits or "vales" were given as evidence of the cash advances. He never had the opportunity to disburse public funds under the "vale" system, for in the first place, the public funds were not turned over to him.

Consequently, the prima facie evidence that public funds have been put to the personal use of petitioner has been obliterated by the fact that he did not receive the money as municipal treasurer. In *Zambrano v. Sandiganbayan*, [47] we said that if the accused did not receive the public funds, there was no malversation. In *Diaz vs. Sandiganbayan*, [48] we held 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.

In malversation, it is necessary to prove that the accused received public funds, and that he could not account for them and did not have them in his possession and that he could not give a reasonable excuse for the disappearance of the same. [49] In this case, the prosecution failed to establish this important element of malversation. In fact, it did not really exist. Petitioner gave a reasonable and satisfactory explanation of his cash accountability of public funds that were duly liquidated. The Court must not reject arbitrarily an explanation consistent with the presumption of innocence. [50]

In *Narciso v. Sandiganbayan*, [51] we said that where "there is no evidence whatever that over and above the funds found by the auditors in his actual possession, Narciso had received the additional amount of P14,500.00, which he could no longer produce or account for at the time of the audit, there being no shortage, there has been no taking, appropriation, conversion, or loss of public funds; there is no malversation." We could very well be speaking of the case of petitioner Rueda.

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. This determinant, with the constitutional presumption of innocence which can be overthrown only by the strength of the prosecution's own evidence proving guilt beyond reasonable doubt, irresistibly dictate an exoneration in this case. [52]

The evidence against petitioner is not enough to engender moral certainty of his guilt. This moral certainty is that which convinces and satisfies the conscience of those who are to act upon it. [53]

Accordingly, the presumption of innocence which the Constitution guarantees the petitioner has remained untarnished in this case for want of proof to the contrary. It is safely entrenched in our jurisprudence that unless the prosecution discharges its burden to prove the guilt of an accused beyond reasonable doubt, the latter need not even offer evidence in his behalf. [54]

The prosecution must overthrow the presumption of innocence with proof of guilt of the accused beyond reasonable doubt. The proof against him must survive the test of reason; the strongest suspicion must not be

permitted to sway judgment.[55] Even if the defense is weak, the case against the accused must fail if the prosecution is even weaker, for the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.[56]

In order to convict an accused, the circumstances of the case must exclude all and each and every hypothesis consistent with his innocence.[57]

In conclusion, we find that the guilt of the petitioner has not been proved beyond reasonable doubt. The petitioner must be acquitted. "Every accused is presumed innocent until the contrary is proved; that presumption is solemnly guaranteed by the Bill of Rights. The contrary requires proof beyond reasonable doubt, or that degree of proof, which produces conviction in an unprejudiced mind. Short of this, it is not only the right of the accused to be freed; it is even the constitutional duty of the court to acquit him.[58]

The Fallo

WHEREFORE, the petition is GRANTED and the decision of respondent SANDIGANBAYAN promulgated on March 19, 1996 and the resolution adopted on May 7, 1997 are REVERSED and SET ASIDE. Petitioner JUAN A. RUEDA, JR. is hereby ACQUITTED on reasonable doubt of the charge of malversation of public funds, defined and penalized under Article 217 (4) of the Revised Penal Code. His bail bond is ordered cancelled.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

De Leon, Jr., No part. Ponente of Sandiganbayan decision.

[1] In Criminal Case No. 16680, promulgated on March 19, 1996, Justice Sabino R. de Leon, Jr., ponente (now Associate Justice, Supreme Court), Justices Cipriano A. del Rosario and Roberto M. Lagman, concurring. Petition, Annex "A", Rollo, pp. 31-53.

[2] This is a palpable and patent error (See Article 39, Revised Penal Code). However, in view of the resulting acquittal of petitioner, it has become functus officio.

[3] Adopted on May 07, 1997, Petition, Annex "B", Rollo, pp. 54-62.

[4] SB Rollo, pp. 1-2.

[5] Certificate of Arraignment, SB Rollo, p. 61; Order, dated November 29, 1991, SB Rollo, p. 64.

[6] Not quoted verbatim but with editorial changes.

[7] For unexplained reasons, neither the mayor nor the municipal officials and employees who made the cash advances were prosecuted for malversation of public funds or otherwise administratively charged.

[8] Per Official Receipts marked as Exhs. 1-8.

[9] Rollo, pp. 32-37.

[10] Petition, Rollo, pp. 31-53, at p. 52.

[11] SB Rollo, pp. 274-289.

[12] *Supra*, Note 3.

[13] Petition filed on May 20, 1997, Rollo, pp. 3-30. On September 16, 1998, we gave due course to the petition, Rollo, pp. 133-134.

[14] Petition, Rollo, p. 11.

[15] *Diaz v. Sandiganbayan*, 302 SCRA 118, 137 [1999], citing *Macadangdang v. Sandiganbayan*, 170 SCRA 308 [1989].

[16] *Diaz vs. Sandiganbayan*, *supra*, Note 15, at p. 137.

[17] *Enriquez v. People*, G. R. No. 119239; *Espinosa v. Sandiganbayan*, G. R. No. 119285, May 9, 2000.

[18] *Tinga v. People*, 160 SCRA 483 [1988].

[19] *Bugayong v. People*, 202 SCRA 762 [1991].

[20] *Alvarez v. Sandiganbayan*, 201 SCRA 557 [1991].

[21] *Diaz v. Sandiganbayan*, *supra*, Note 15, at p. 131.

[22] *Bugayong v. People*, *supra*, Note 19.

[23] *Narciso v. Sandiganbayan*, 229 SCRA 229 [1994].

[24] Article 217, Revised Penal Code, penalties omitted for brevity.

[25] *Nizurtado v. Sandiganbayan*, 239 SCRA 33, 42 [1994]; *People v. Pepito*, 335 Phil. 37, 46 [1997]; *Diaz v. Sandiganbayan*, *supra*, Note 15, pp. 130-131; *Salamera v. Sandiganbayan*, 303 SCRA 217, 227 [1999]; *Enriquez v. People*; *Espinosa v. Sandiganbayan*, *supra*, Note 17; *Agbanlog v. People*, 222 SCRA 530, 536-537 [1993]; *Peñanueva, Jr. v. Sandiganbayan*, 224 SCRA 86, 92 [1993]; *Corpuz v. People*, 194 SCRA 73, 80 [1991].

[26] *Diaz v. Sandiganbayan*, *supra*, Note 15, p. 130, citing *Kimpo v. Sandiganbayan*, 232 SCRA 53, 62 [1994].

[27] *Diaz v. Sandiganbayan*, *supra*, Note 15, p. 131, citing *U. S. v. Catolico*, 18 Phil. 504, cited in *U.S. v. Elviña*, 24 Phil. 230, and *Quizo v. Sandiganbayan*, 149 SCRA 108; *Mahinay v. Sandiganbayan*, 173 SCRA 237.

[28] *Diaz v. Sandiganbayan*, *supra*, Note 15, p. 131.

[29] *Salamera v. Sandiganbayan*, *supra*, Note 25, at p. 227.

[30] SB Decision, Rollo, pp. 39-40.

[31] *Intermediate Accounting, Comprehensive Volume, Ninth Ed.*, by Smith, Jr. and Skousen, Brigham Young University, Copyright 1987, South-Western Publishing Co., Cincinnati, Ohio, USA, p. 243.

[32] *Enriquez v. People*; *Espinosa v. Sandiganbayan*, *supra*, Note 17.

[33] *Tanggote v. Sandiganbayan*, 236 SCRA 273, 279 [1994].

[34] *Enriquez v. People*; *Espinosa vs. Sandiganbayan*, *supra*, Note 17.

[35] TSN, October 7, 1992, pp. 8-9.

[36] *Enriquez v. People*; *Espinosa vs. Sandiganbayan*, *supra*, Note 17.

[37] *Sandiganbayan Decision*, Rollo, p. 36.

[38] TSN, October 7, 1992, pp. 9-10.

[39] Supra, Note 25.

[40] TSN, October 7, 1992, pp. 5-6.

[41] Ibid., pp. 6-7.

[42] Alvarez v. Sandiganbayan, supra, Note 20.

[43] Meneses v. Sandiganbayan, 233 SCRA 441 [1994].

[44] Cabello v. Sandiganbayan, 197 SCRA 94 [1991].

[45] Yong Chan Kim v. People, 193 SCRA 344, 352 [1991].

[46] Diaz v. Sandiganbayan, supra, Note 15, at p. 133.

[47] 208 SCRA 44 [1992].

[48] Supra, Note 15.

[49] Tanggote v. Sandiganbayan, supra, Note 33; Agbanlog v. People, supra, Note 25; De Guzman v. People of the Philippines, 119 SCRA 337, 347 [1982].

[50] Dizon-Pamintuan v. People, 234 SCRA 63 [1994], citing Diong-an v. Court of Appeals, 138 SCRA 39 [1985].

[51] Supra, Note 23.

[52] People v. Salangga, 234 SCRA 407, 423 [1994].

[53] People v. Salguero, 198 SRA 357, 367 [1991]; People v. Aranda, 226 SCRA 562, 572 [1993].

[54] People v. Sulit, 233 SCRA 117, 125 [1994].

[55] People v. Austria, 195 SCRA 700, 709 [1991].

[56] People v. Cruz, 215 SCRA 339, 347 [1992]; People v. Cruz, 231 SCRA 759, 771-772 [1994]; See also People v. Aniscal, 228 SCRA 101, 113 [1993].

[57] People v. del Rosario, 234 SCRA 246, 253 [1994].

[58] People v. Valeriano, 226 SCRA 694, 714 [1993], citing People v. Pido, 200 SCRA 45, [1991]

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