

PABLO N. QUIÑON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 136462. September 19, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review seeks to set aside the September 21, 1998 decision and the December 4, 1998 resolution of the Sandiganbayan[1] in Criminal Case No. 16279, convicting petitioner Pablo N. Quiñon of the crime of malversation of public property as defined and penalized under Article 217 of the Revised Penal Code.

The Information filed against accused-appellant reads:

That on or about March 14, 1988 or subsequent thereto, in Calinog, Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Station Commander of the Calinog, Iloilo PC/INP, and who by reason of the duties of his office is accountable for public properties that come to his possession and control, received in his official capacity the following firearms: two (2) super caliber .38 pistol and their magazines, with Serial Nos. 310136 and 310150, valued at P5,500.00 per pistol, with total value of P11,000.00; and one (1) 12 gauge shotgun, with Serial No. 242446 valued at P4,000.00, and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously apply and convert to his personal use and benefit said firearms to the damage and prejudice of the government in the total amount of Fifteen Thousand Pesos (P15,000.00), Philippine Currency.

CONTRARY TO LAW.[2]

On May 13, 1991, petitioner pleaded not guilty. Petitioner, however, failed to appear when the case was set for pre-trial and trial from July 18, 1991 to February 23, 1993, allegedly due to hypertension.[3]

The facts as established by the prosecution: Petitioner Police Sergeant Pablo N. Quiñon was the Station Commander of Calinog, Iloilo, Philippine Constabulary-Integrated National Police (PC-INP), now Philippine National Police (PNP), from February 5, 1987 to March 14, 1988. During his incumbency and by reason of his functions as Station Commander, he was issued the following firearms and ammunitions under Memorandum Receipts duly signed by him, to wit:

Memorandum Receipt dated February 20, 1987:

1 each Pistol Star Cal. 38

Sn 310150

1 each Mag

1 each Pistol Star Cal. 38

Sn 310151

6 Rounds Ammos Cal 38 w/ mag

1 each Pistol Star Cal. 38

[Sn] 310136

6 Rounds Ammos Cal. 38 w/ mag

1 each Rifle M16 armalite Cal. 5.45

Sn 157840

40 Rounds Ammos Cal. 5.56[4]

Memorandum Receipt dated April 24, 1987:

1 each Shotgun Squire Bingham 12 gauge

Sn 242446[5]

On March 15, 1988, Police Sergeant Emilio Aviador assumed office as Station Commander of the Calinog, Iloilo, PC-INP, vice petitioner who was transferred to the 322nd Philippine Constabulary Co., at Camp Tirador, Iloilo. After an inventory of the firearms of the Calinog, Iloilo Police Station, it was discovered that petitioner did not turn over the firearms issued to him. Thus, Police Sergeant Aviador sent a radio message to petitioner demanding the return of the unaccounted firearms. Police Sergeant Aviador likewise sought the help of the Provincial Commander/Police Superintendent of the Iloilo PC-INP for the return of said firearms and ammunitions.[6]

Subsequently, petitioner surrendered one (1) unit M16 armalite rifle with Serial No. 157840 and one (1) pistol cal. 38 with Serial No. 310151 to the 322nd PC Co., at Camp Tirador, Iloilo, which in turn delivered said firearms to the Calinog, Iloilo Police Station. On March 17, 1989, Police Sergeant Aviador recovered the shotgun with Serial No. 242446 from a certain Rudy Penuela, an alleged asset or informer of petitioner when he was still the Station Commander of Calinog.[7]

Petitioner failed to return the two remaining .38 caliber pistols with Serial Nos. 310136 and 310150 despite demands of the Calinog Police Station. The value of the unaccounted firearms per the updated cost valuation dated July 30, 1984 of the Ministry of National Defense, amounted to P5,500.00 each, or a total of P11,000.00.[8]

After the prosecution rested its case, the Sandiganbayan issued an order directing petitioner to present evidence on July 22 and 23, 1983. Petitioner again failed to appear on the scheduled dates despite notice. Hence, the Sandiganbayan considered his absence a waiver of his right to present evidence. Upon motion of the prosecution, the case was submitted for decision. Petitioner filed a motion for reconsideration claiming that he was denied due process, however, the same was denied by the Sandiganbayan.[9]

Hence, the instant petition for certiorari and prohibition docketed as G.R. No. 113908. Petitioner contended, inter alia, that he was denied due process of law and that the information filed against him does not charge an offense. The petition was denied for lack of merit.[10]

On August 7, 1998, the Sandiganbayan rendered judgment in Criminal Case No. 16279, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, finding the accused guilty beyond reasonable doubt of the crime of malversation of public properties, more particularly of two .38 Cal. Pistols, with a total value of P11,000.00;

and the Court hereby sentences the accused to suffer an indeterminate sentence of imprisonment of six (6) years and one (1) day of prision mayor, as minimum, to ten (10) years and one (1) day of reclusion temporal, as maximum, to pay a fine of P11,000.00 and also to suffer the penalty of perpetual special disqualification; and to pay the costs.

SO ORDERED.[11]

Petitioner's motion for reconsideration was denied and the decretal portion of the August 7, 1998 decision was amended with respect to the penalty, thus-

WHEREFORE, judgment is hereby rendered, finding the accused guilty, beyond reasonable doubt, of the crime of malversation of public properties, more particularly of two .38 Cal. pistols, with a total value of P11,000.00; and the Court hereby sentences the accused to suffer an indeterminate sentence of imprisonment of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, to pay a fine of P11,000.00, and also to suffer the penalty of perpetual special disqualification and to pay the costs.

SO ORDERED.[12]

Hence, the instant petition on the following grounds:

I

THE SANDIGANBAYAN PATENTLY ERRED IN HOLDING THAT PETITIONER IS AN ACCOUNTABLE PUBLIC OFFICER.

II

THE SANDIGANBAYAN PATENTLY ERRED IN FINDING PETITIONER GUILTY OF MALVERSATION UNDER ARTICLE 217 OF THE REVISED PENAL CODE.[13]

The crime of malversation of public funds or property is defined 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.

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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, essential for the conviction of an accused under the above penal provision are:

1. That the offender is a public officer;
2. That he has the custody or control of funds or property by reason of the duties of his office;
3. That the funds or property are public funds or property for which he is accountable; and
4. That he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.[14]

Petitioner does not deny that he received the firearms in question by reason of his office as Station Commander of the Calinog, Iloilo PC-INP, and he failed to return them upon the expiration of his term and despite demand of the new Station Commander. He, however, argues that he cannot be convicted of malversation of public property because he is not an “accountable officer” within the contemplation of Article 217. Citing the Administrative Code of 1987,[15] petitioner alleges that “only public officers whose duties require possession or custody of government public funds and are bonded, are considered public accountable officers.”[16]

The contentions lack merit.

An accountable public officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office. To be liable for malversation, an accountable officer need not be a bonded official. The name or relative importance of the office or employment is not the controlling factor. What is decisive is the nature of the duties that he performs and that as part of, and by reason of said duties, he receives public money or property which he is bound to account.[17]

In the case at bar, the delivery to petitioner of the firearms belonging to the Government, by reason of his office as Station Commander of Calinog, Iloilo, PC-INP, necessarily entailed the obligation on his part to safely keep the firearms, use them for the purposes for which they were entrusted to him, and to return them to the proper authority at the termination of his tenure as commander, or on demand by the owner, the duty to account for said firearms.[18] Thus, in *Felicilda v. Grospe*,[19] the Court held a police officer accountable for the firearms issued to him and consequently convicted him for malversation of public property when he failed to produce said firearms upon demand by the proper authority.

Article 217 of the Revised Penal Code is designed to protect the government and to penalize erring public officials and conspiring private individuals responsible for the loss of public funds and property by reason of corrupt motives or neglect or disregard of duty. Its all encompassing provision cannot be limited by petitioner’s absurd interpretation of the provisions of the Administrative Code restricting the application thereof only to government funds and to bonded public officials.

Under Article 217 of the Code, 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. Considering that petitioner failed to adduce evidence on why he failed to produce, after the expiration of his term and despite lawful demand, the two .38 caliber pistols with Serial Nos. 310136 and 310150 issued to him by reason of his duties as Station Commander of the Calinog, Iloilo, PC-INP, the Sandiganbayan correctly convicted him of malversation of public property.

Regarding the imposable penalty, the Sandiganbayan correctly amended the maximum period of petitioner’s indeterminate penalty from ten (10) years and one (1) day of reclusion temporal to twelve (12) years and one (1) day of reclusion temporal. Under paragraph (3) of Article 217, the penalty for malversation where the amount involved is more than P6,000.00 but less than P12,000.00, is prision mayor in its maximum period to reclusion temporal in its minimum period. Since there are no modifying circumstances, penalty shall be imposed in its medium period, i.e., within the range of eleven (11) years, six (6) months and twenty-one (21) days to thirteen (13) years, one (1) month and ten (10) days. The minimum period of the indeterminate penalty shall be within the range of six (6) years and one (1) day to ten (10) years of prision mayor, the penalty next lower in degree to the prescribed penalty.

WHEREFORE, in view of all the foregoing, the resolution of the Sandiganbayan in Criminal Case No. 16279, convicting petitioner Pablo N. Quiñon of the crime of malversation of public property and sentencing him to suffer the indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of prision mayor, as

minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, as well as the penalty of perpetual special disqualification; and ordering him to pay a fine of P11,000.00, is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[1] Fourth Division, composed of Associate Justices: Sabino R. De Leon, Jr. (Chairman and ponente); Narciso S. Nario (member); and Teresita Leonardo-De Castro (member).

[2] Records, p. 1.

[3] Records, pp. 257-261.

[4] Exhibit "A".

[5] Exhibit "B".

[6] Exhibit "C".

[7] TSN, February 24, 1993, pp. 6-7; Records, pp. 4-5.

[8] Exhibits "D" and "D-1."

[9] Records, p. 255.

[10] *People v. Quiñon*, 271 SCRA 575 [1997] .

[11] Rollo, p. 33.

[12] Rollo, pp. 41-42.

[13]] Rollo, p. 11.

[14] *Diego v. Sandiganbayan*, 339 SCRA 592, 603 [2000] , citing *Salamera v. Sandiganbayan*, 217 SCRA 303 [1999] .

[15] Sec. 50. Accountable Officers; Board Requirements. – (1) Every officer of any government agency whose duties permit or require the possession or custody of government funds shall be accountable therefore and for safekeeping thereof in conformity with law; and (2) Every accountable officer shall be properly bonded in accordance with law. (Chapter 9, Book V)

[16] Rollo, p. 19.

[17] *Aquino*, Revised Penal Code, Vol. II, [1997] , p. 484.

[18] *People v. Quiñon*, *supra*.

[19] 211 SCRA 285 [1992] .

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