

ROMEO DIEGO Y DE JOYA, PETITIONER, VS. THE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 139282. September 04, 2000*

Ponente: GONZAGA-REYES, J.

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Romeo Diego Y De Joya, herein petitioner, was convicted as principal in the crime of Malversation of Public Property by the Sandiganbayan in its Decision[1] dated February 22, 1999 in Criminal Case No. 21655. On July 7, 1999, the Sandiganbayan issued a Resolution denying petitioner's Motion for Reconsideration of the said decision. Hence, this appeal by certiorari of the decision and resolution of the Sandiganbayan.

The criminal case against petitioner stems from these undisputed facts as summarized by the Sandiganbayan, to wit:

"Accused Romeo Diego started his career in the Philippine National Police as an Auto Mechanic way back in 1950. Through the years, he rose to the rank of Police Superintendent (equivalent rank of Lt. Colonel). At the time of the loss of the "shabu", the accused was the Evidence Custodian of the National Capital Region, Criminal Investigation Service Command at Camp Crame, Quezon City. On November 27, 1992, he received for safekeeping forty (40) self-sealed transparent plastic bags of methamphetamine hydrochloride or "shabu" with an estimated street value of Five Million Pesos (P5,000,000.00). As custodian of the said "shabu", he received a total of three (3) subpoenas from Branch 111, Regional Trial Court, Pasay City, to bring the said "shabu" as evidence in Criminal Case No. 92-2097, entitled *People vs. Ong Foo de la Cruz*. The first two subpoenas were for the hearings held on January 27, 1993 and January 29, 1993 during which police escorts accompanied the accused to help secure the subject evidence. On these two occasions, he was accompanied by three police officers, namely: Crime Investigator II Zosimo Escobar, SPO3 Oscar Bacani and SPO3 Isalvanor Casissid. Thus, the "shabu" was twice brought to the court but was not presented in evidence since the hearings were postponed. In both instances, the accused also asked Presiding Judge Sayo whether he could turn over the evidence to the custody of the court. The latter, however, refused to accept the "shabu" for the reason that the court did not have a vault to secure the same. In going to the Regional Trial Court at Pasay City, the accused and his companions would leave Camp Crame at about 7:30 a.m. and they would take EDSA to F.B. Harrison, which would lead them to the courthouse.

By virtue of the third subpoena, the accused again left his office to go to the RTC at Pasay City with the five-and-a-half kilos (5.5 kgs.) of "shabu" on February 9, 1993, again leaving at around 7:30 a.m. As usual, he took EDSA to F.B. Harrison towards the Pasay City courthouse. Unlike the two previous trips to the said courthouse, however, the accused travelled alone on that fateful day of February 9, 1993. In addition, unlike the two other previous trips, which were uneventful, accused was waylaid by holduppers along F.B. Harrison, about fifty (50) meters from the courthouse. The holduppers blocked the path of accused's Beetle and two holduppers alighted from their vehicle, a dark blue box type Lancer with plate number PGM or PGN 44? One of the holduppers, armed with a .45 caliber pistol, approached from the passenger side of the accused's vehicle and told the accused, "Huwag kang papalag. Madidisgrasya ka lang." The holdupper then asked for accused's ignition keys and eyeglasses, opened the passenger door of the vehicle, grabbed the bag containing the "shabu"

placed at the vehicle's front passenger floor. The holduppers immediately left the scene of the crime and accused reported the incident to Judge Sayo of Branch 111 of the Regional Trial Court and to his office at the CIS, to Major Gil Meneses, in particular. The accused then testified in court before Judge Sayo regarding the loss of the "shabu" and immediately reported the robbery to the Pasay City where he gave his statement (Exhibit "1") regarding the incident on F.B. Harrison St. (sic)"[2]

Petitioner was charged with Malversation of Public Property in an Information that reads:

"That on or about February 9, 1993, along F.B. Harrison St., Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the Evidence Custodian of the National Capital Regional Office - PNPCIBC, and as such, by reason of his office and duties is responsible and accountable for public funds or properties entrusted or received by him, by means of gross negligence, did then and there wilfully (sic), unlawfully, and feloniously fail to take the necessary precautions to adequately secure and safeguard the safe delivery of one (1) small carton containing forty (40) self-sealed transparent plastic bags of "shabu" with total gross weight of 5,900 grams, valued at FIVE MILLION (P5,000,000.00) PESOS, Philippine currency, to the Court, resulting to the loss of the said 'shabu', to the damage and prejudice of the Government in the aforesaid amount."[3]

On February 1, 1995, before the commencement of the trial, the prosecution and the defense entered into a Stipulation of Facts, agreeing to the following:

"1.

That at all times relevant to this case, accused Romeo de Joya Diego was then evidence custodian of the National Capital Region (NCR), Criminal Investigation Service Command (CISC), Philippine National Police (PNP), Camp Crame, Quezon City.

2.

That on November 27, 1992, accused Romeo de Joya Diego received for safekeeping one (1) small cartoon (sic) containing forty (40) self-sealed plastic bags of 'SHABU' with a street value of Five Million Pesos (5,000,000.00) (sic).

3.

That on February 9, 1993 he (accused Romeo de Joya Diego) was subpoenaed to appear and bring the subject 'SHABU' to Branch 111, Regional Trial Court, Pasay City.

4.

That at about 7:20 A.M. February 9, 1993, before he left for the Court he sought the assistance of SPO 3 Isalvanor Casidsid to escort him. However, the latter was not available because he had also been subpoenaed to appear before Regional Trial Court (sic) Mariano Umali of Pasig.

5.

That accused failed to deliver the subject 'SHABU' before the Court on said date (February 9, 1993) neither was it (the subject 'SHABU') returned to the evidence room of the NCR, CISC, PAP, Camp Crame, Quezon

City.

6.

That accused testified on said date (February 9, 1993) before the RTC, Branch 111, Pasay City, Re lost (sic) of subject 'SHABU'.”[4]

Trial then ensued. On March 6, 1995, the prosecution manifested that it was not presenting any testimonial evidence and rested its case upon orally offering its exhibits. After the prosecution had rested its case, the prosecution and defense again agreed to a stipulation of facts, thus:

“1.

That the accused Romeo Diego gave his statement marked as Exhibit 1 before SPO2 Rodolfo O. Diza on February 9, 1993, which consists of three (3) pages, 1-A being the date of the statement and the signature being Exhibit 1-B;

2.

That a Certification was issued by RTC Presiding Judge Sofronio G. Sayo on January 27, 1995 in Criminal Case No. 92-2097 entitled People of the Philippine versus Eng. Foo de la Cruz, it being understood that the prosecution does not admit the truth of the contents of the certification;

3.

The due genuineness and due execution of Exhibit 3, together with submarkings, which is the transcript of stenographic notes taken in Criminal Case No. 92-2097, entitled People of the Philippines versus Eng. Foo de la Cruz, consisting of forty-two pages.”[5]

After the defense had presented its witnesses and exhibits, the Sandiganbayan rendered its judgment of conviction, the dispositive portion of which reads:

“WHEREFORE, the Court hereby renders judgment finding accused Superintendent Romeo Diego y De Joya GUILTY beyond reasonable doubt as principal in the crime of Malversation of Public Property, as defined and penalized under paragraph 4 of Article 217 of the Revised Penal Code; and considering the mitigating circumstance of voluntary surrender, hereby sentences the accused to suffer an indeterminate penalty of imprisonment ranging from 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 FIVE MILLION PESOS (P5,000,000.00); to suffer the penalty of perpetual special disqualification from holding any public office; and, to pay the costs.”[6]

Petitioner now assails the judgment in this appeal, relying on the following grounds:

First - WHETHER OR NOT THE EVIDENCE ADDUCED BY THE PROSECUTION IN THE PRACTICALLY REVERSE PROCEDURE OF PRESENTATION ADOPTED BY IT IS SUFFICIENT TO PROVE THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED IN THE INFORMATION;

Second - WHETHER OR NOT, ASSUMING THAT THE BURDEN OF EVIDENCE WAS PROPERLY SHIFTED TO PETITIONER, THE EXPLANATION HE RELIED UPON FOR THE LOSS OF THE SUBJECT “SHABU” IS SUFFICIENT TO EXONERATE HIM FROM LIABILITY FOR THE OFFENSE

CHARGED;

Third - WHETHER OR NOT, ASSUMING WITHOUT ADMITTING, THAT PETITIONER IS GUILTY AS CHARGED, THE SUPPOSED ESTIMATED "STREET VALUE" OF THE SUBJECT "SHABU" IS A PROPER BASIS FOR THE ASSESSMENT OF THE PENALTY IMPOSABLE IN THE PREMISES; and

Fourth - WHETHER OR NOT THE GUILT OF PETITIONER OF (sic) THE OFFENSE CHARGED HAS BEEN PROVED BY EVIDENCE BEYOND REASONABLE DOUBT.[7]

The petition has no merit.

Petitioner contends that there was a virtual reversal of the normal order of presentation of evidence during the trial when the Sandiganbayan required him, as accused, to put up his defense when the prosecution rested its case relying only on its exhibits and the stipulation of facts. However, the records of this case and the petition itself reveal that the trial in the Sandiganbayan proceeded in the order prescribed by Rule 119, Section 3 of the Rules of Court.[8] The prosecution's reliance on the stipulation of facts and its exhibits, without offering any testimonial evidence, is an exercise of its prosecutorial prerogative. If petitioner truly believed that the evidence of the prosecution was inherently weak such that it failed to establish his culpability for the crime charged, then he should have filed a Demurrer to Evidence to dismiss the case. However, instead of taking this course of action, petitioner entered into another stipulation of facts and presented his evidence. Petitioner cannot now belatedly claim that the Sandiganbayan supposedly caused the onus probandi to shift to him, the accused in a criminal case, when petitioner himself acquiesced to the regular order of the proceedings.

Petitioner bewails the prosecution's reliance on the stipulation of facts. It bears stress that the stipulation of facts is a judicial admission[9] and in the absence of a showing that "(1) the admission was made through palpable mistake", or that "(2) no such admission was made, the admissions bind the declarant".[10]

In this case, petitioner duly admitted in the stipulation of facts, entered into during the pre-trial, that the subject shabu worth five million pesos (P5,000,000.00) was in his custody for safekeeping; that petitioner was subpoenaed to bring the shabu to Branch 111, Regional Trial Court, Pasay City Court; that petitioner failed to deliver the shabu before said court and that neither was it returned to the evidence room.[11] The mere fact that petitioner failed to account for the shabu under his custody raises the rebuttable presumption that he malversed the subject shabu. Article 217 of the Revised Penal Code states that:

"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, shall suffer:

- The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed 200 pesos.
- 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.
- 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.
- 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 his 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).”

The fundamental issue thus to be considered is whether or not petitioner was able to successfully overturn the foregoing presumption. We hold that based on the testimony of petitioner and the judicial admissions embodied in the stipulation of facts, the presumption stands un rebutted.

All of the four elements of malversation are present in the case at bar, and these elements are:

- That the offender is a public officer;
- That he has the custody or control of funds or property by reason of the duties of his office;
- That the funds or property are public funds or property for which he is accountable; and
- That he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them. (Emphasis ours)[12]

Petitioner is a public officer who had custody of the shabu by reason of his official duties as Evidence Custodian of the National Capital Regional Office of the Philippine National Police - Criminal Investigation Service Command (NCRO, PNP-CISC). The shabu was public property for which petitioner was accountable. While the evidence on record fail to show that petitioner misappropriated said public property for his personal aggrandizement, the evidence points to the conclusion that the loss of the shabu to armed men was through petitioner’s negligence.

Malversation is committed either intentionally or by negligence.[13] The Sandiganbayan in this case ruled that the loss of the shabu was due to petitioner’s gross negligence, a factual finding that is as a rule conclusive upon this Court.[14] In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[15] What makes petitioner’s gross negligence more pronounced is the fact that he was fully aware of the need to transport the shabu with police escorts but despite the knowledge of the peril involved in the transportation of illegal drugs, petitioner took it upon himself to deliver the subject shabu without police escort, despite the fact that the shabu involved is valued at five million pesos (P5,000,000.00), weighing 5.5 kilograms and packed in 40 sealed transparent plastic bags. The sheer nature, value, and amount of the contraband should have alerted petitioner, an experienced evidence custodian, to the risk that organized criminals might attempt to forcibly take away the shabu. Petitioner’s diligence unmistakably fell short of that required by the circumstances.

We cite with approval the following findings of the Sandiganbayan:

“Indeed, the accused had miserably failed to exercise the necessary precautions to secure the safekeeping of the “shabu” under his care. There is no doubt that the accused was aware of the dangers posed in transporting such a large amount of “shabu” subject of the instant case. As a matter of fact, he deemed it indispensable to secure, as he did, the assistance of three police officers in the previous instances as escorts in transporting the “shabu” to and from the courthouse in Pasay City. His knowledge of such dangers was further revealed in his very own testimony before the court, thus:

J. Lagman:

Q: When you found that there was nobody to escort you, why did you not take steps to inform the Court that you could not come considering the volume of the shabu that you will bring to the Court and considering the

enormity of the case that you are supposed to attend?

A: My eagerness was to bring the evidence to the Court and turn it over to them because that is dangerous.

Q: It was very dangerous for you to carry the shabu alone from your office to the Court as you said now, is that correct? In spite of that, you took it upon yourself to bring the shabu alone considering the danger that you said was lurking outside?

A: Yes, sir.

Undoubtedly, the danger posed of transporting the “shabu” was so real and apparent that the accused had previously tried to turn over the same to the custody of the Regional Trial Court in Pasay City in order that he be relieved of the burden of securing the same. His knowledge of such danger, notwithstanding, the accused proceeded to Pasay City without the indispensable police escorts necessary to secure the “shabu”. He failed to take the necessary steps to procure police escorts when SPO3 Isalvanor Casidsid was unavailable. The fact that he failed to organize the requisite police escorts on the day or days prior to the court date when he could have done so is already an indication of the accused’s laxity in the performance of his duties. Such laxity became even worse when he decided to proceed to Pasay City, bringing along with him the “shabu”, without police escorts. The alleged fact that he waited for thirty (30) minutes to look for an alternate escort, without taking any further action, is insufficient to absolve accused from liability. Neither is the accused’s fear of being cited for contempt sufficient justification for his irresponsible actions. He certainly could explain to the judge’s satisfaction his failure to appear in court as required.

In the case at bench, the accused could have pursued other options to ensure the security of the “shabu”. The accused would have waited until alternative escorts arrived at the office. A simple telephone call to the office of Judge Sayo informing the latter that the accused would be late would have sufficed. Under the circumstances, the judge would have understood the accused’s predicament and could have called the case at a later hour. Another option is not to have gone to the court if no escorts could be procured. Again, a telephone call to the office of the judge would again have probably sufficed to allay his fears of being cited for contempt. Simply put, the accused failed to take all possible actions to ensure the security of the “shabu”; he left too many stones unturned, so to speak.

Furthermore, the court notes that the accused carried only a gun of a mere caliber .22. Indeed, if he were to truly secure his valuable cargo, as was his bounden duty, he should have carried a more powerful firearm and maybe more than one such firearm, the need therefor having become more compelling considering that he was to travel alone. It is a matter of common experience that holduppers normally carry high powered firearms.”[16]

In a last ditch effort to skirt the issue of gross negligence imputed against petitioner, petitioner claims that the robbery was a fortuitous event. This argument must likewise fail since the loss of the shabu to armed men is by no means a fortuitous event. A fortuitous event is defined as an occurrence which could not be foreseen or which though foreseen, is inevitable.[17] Again, the very nature of the object under the custody of petitioner and its street value posed risks. One of these risks is that the shabu could be taken forcibly by armed men, a risk that petitioner was in fact preparing against. The possibility of losing the shabu to armed men was evidently a foreseeable event.

By all accounts, petitioner had previously undertaken certain measures to safeguard the transportation of the shabu. In fact, during his first trip to the court he was accompanied by police escorts; he suggested that the shabu be deposited with the court, which the court denied due to the absence of a vault; petitioner tried to look for a police escort on the day he was rescheduled to deliver the shabu in court, but allegedly to no avail; and he decided to transport the shabu alone and incognito. Petitioner’s actions underscore the fact that he was fully aware of the inherent danger in transporting the shabu, a fact that defeats his claim that the loss of the shabu to armed robbers

was a fortuitous event.

Concededly, the presence of police escorts would not have necessarily deterred the robbers from taking the shabu, but in such a case, petitioner would have shown due diligence that would controvert his own liability. True, petitioner is not expected to match a holdupper gun for gun. However, what is simply expected of him is to exhibit a standard of diligence commensurate with the circumstances of time, person and place.

The scale of the damage sustained by the government because of the loss of the shabu cannot be overemphasized. The estimated street value of the shabu is five million pesos (P5,000,000.00) and the circulation of this illegal substance in the market is a major setback in the effort of government to curb drug addiction. We are thus in complete agreement with the Sandiganbayan that the unnecessary risks taken by petitioner in transporting the subject shabu, leading to the eventual loss of this prohibited substance, cannot be countenanced.

Lastly, petitioner contends that the illegal nature of the shabu prevents the courts from basing the penalty on its value. We hold that the Sandiganbayan did not commit a grievous error when it imposed the penalty based on the value of the shabu. In malversation, the penalty for the offense is dependent on the value of the public funds, money or property malversed.[18] Generally, when the value is disputed, the court is proscribed from taking judicial notice of the value and must receive evidence of the disputed facts with notice to the parties.[19] However, in the case at bar, the value of the shabu is not in dispute. Petitioner subscribed to the stipulation of facts that the street value of the shabu is five million pesos (P5,000,000.00). As stated earlier, statements embodied in the stipulation of facts are judicial admissions and are thereby binding on the declarant. There is no indication that the admission as to the value of the shabu was made through palpable mistake and petitioner does not deny having made such an admission. Thus, the stipulated value of the shabu is not an improper basis for the imposition of the penalty.[20]

WHEREFORE, we AFFIRM the appealed decision of the Sandiganbayan convicting the accused Romeo Diego Y de Joya of Malversation of Public Property and imposing upon him the indeterminate penalty of imprisonment ranging from 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 in view of the mitigating circumstance of voluntary surrender; to pay a fine of five million pesos (P5,000,000.00); and to suffer the penalty of perpetual special disqualification from holding any public office.

Costs against petitioner.

SO ORDERED.

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

[1] Per Associate Justice Narciso S. Nario, Sr. and concurred in by Associate Justices Sabino R. de Leon and Rodolfo G. Palattao, Fourth Division, Sandiganbayan.

[2] Rollo, pp. 44-46.

[3] Records, p. 313.

[4] Ibid., p. 56.

[5] Ibid., p. 71.

[6] Ibid., pp. 222-223.

[7] Rollo, p. 17.

[8] Sec. 3. Order of trial.-The trial shall proceed in the following order:

(a)

The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.

(b)

The accused may present evidence to prove his defense, and damages, if any, arising from the issuance of any provisional remedy in the case.

(c)

The parties may then respectively present rebutting evidence only, unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

(d)

Upon admission of the evidence, the case shall be deemed submitted for decision unless the court directs the parties to argue orally or to submit memoranda.

(e)

However, when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly.

[9] Section 4 of Rule 129 of the Rules of Court states:

“SEC. 4. Judicial Admissions. ---An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made”.

[10] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 134467, November 17, 1999.

[11] Records, pp. 56-57.

[12] Salamera vs. Sandiganbayan, 217 SCRA 303 (1999), p. 227.

[13] Cabello vs. Sandiganbayan, 197 SCRA 94 (1991), p. 103.

[14] Diaz vs. Sandiganbayan, 302 SCRA 118 (1999), p. 137.

[15] Quibal vs. Sandiganbayan, 244 SCRA 224 (1995), p. 232.

[16] Rollo, pp. 52-55.

[17] Article 1174, Civil Code.

[18] Article 217, Revised Penal Code.

[19] Salamera, supra note 12, p. 229.

[20] “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, 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 200 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 his 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).” (Emphasis ours)

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