

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOHN PETER HIPOL, APPELLANT.

G.R. No. 140549. July 22, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Appellant John Peter Hipol was charged in Criminal Case No. 14716-R with Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, committed as follows:

That on or about during the period March 8, 1997, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public accountable officer and bonded officer assigned with the Office of the City Treasurer, Baguio City, and as such is accountable for public funds entrusted to and received by him, by reason of his position while in the performance of his official functions, taking advantage of his official functions, taking advantage of his official position, did then and there willfully, unlawfully and feloniously take away, misappropriate, embezzle, misapply and convert for his personal use and benefit the amount of TWO MILLION THREE HUNDRED NINETY THOUSAND THREE HUNDRED SEVENTY EIGHT PESOS & 57/100 (2,390,378.57), Philippine Currency, from such funds, thereby causing damage and prejudice to the government in the aforementioned amount.

CONTRARY TO LAW.[1]

Accused-appellant pleaded "not guilty" on arraignment.[2] Thereafter, trial ensued.

The facts may be summarized as follows:

On December 19, 1993, appellant was employed as Cash Clerk II at the City Treasurer's Office of Baguio City.[3] He was assigned at the Cash Division, headed by the Cashier IV, Mrs. Nelia De Jesus. Appellant's duties included assisting the Cashier in the preparation of payments of vouchers, correspondences, daily cash reports and cash items reports, Journal of Checks issued by the Cashier, Cash Disbursement Reports, other communications and documents necessary in connection with the handling of cash, and the performance of any other duties that may be assigned to him by the City Treasurer, Assistant City Treasurer and by the Cashier.[4] Appellant was likewise tasked to make almost daily deposits of the collections of the City Treasurer to the Philippine National Bank (PNB), Session Road Branch, Baguio City.[5] Whenever appellant was absent, De Jesus would ask Lerma G. Roque, a Utility Worker at the Baguio City Treasurer's Office, to do the typing jobs and sometimes deposit money collected for the City accompanied by an officer from the City Treasurer's Office.[6]

On January 10, 1997, at 4:00 p.m., Roque was instructed by De Jesus to gather all deposit slips covering all deposits of funds of the City Treasurer's Office with PNB. As was her usual practice, Roque opened the unlocked desk drawer of appellant to get the deposit slips kept therein. Roque inadvertently stumbled upon three PNB deposit slips inside appellant's drawer which did not appear to have been actually deposited and received by the depositary bank. Two of the three bank slips were dated January 2, 1997 for P20,571.38,[7] and P64,795.50,[8] respectively, while the third slip was dated January 9, 1997 in the amount of P49,737.48,[9] Sensing an

irregularity, Roque showed said deposit slips to De Jesus, the Cashier IV, and Mrs. Rosita de Vera, the Acting Assistant Cashier.

Upon verification from her records, De Jesus confirmed that the amounts stated on the aforesaid three deposit slips indeed appeared on her ledgers of collection. On the other hand, the PNB, Session Road Branch, likewise confirmed to De Vera that the amounts corresponding to the aforesaid three deposit slips were not deposited to the city's account.[10] When the desk drawers of appellant were further searched, Roque also unearthed other undeposited bank slips. Subsequently, the Commission on Audit of the City of Baguio conducted the corresponding audit of the books of the Treasurer's Office. The Initial Audit of Rosevida Lopez, City Auditor II, showed that the total amount of money collected but not deposited in the City's bank account was P1,097,063.44.[11]

Further audit of the records of the City Treasurer's Office revealed that an additional amount of P1,293,315.10 was collected but not deposited. Thus, the total amount of money unaccounted for was Two Million Three Hundred Ninety Thousand Three Hundred Seventy-Eight Pesos and Fifty-Seven Centavos (P2,390,378.57).[12]

Appellant vehemently denied the accusation against him, claiming that he does not know anything about the malversation of public funds.

On August 12, 1999 the Regional Trial Court of Baguio City, Branch 3, rendered a decision,[13] the dispositive portion of which reads:

WHEREFORE, the Court finds accused JOHN PETER HIPOL y CAYAGO GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds, and he is hereby sentenced as follows:

- To suffer the penalty of Imprisonment of Reclusion Perpetua at the National Penitentiary, Muntinlupa City;
- To indemnify the Baguio City Government the total amount of Two Million Three Hundred Ninety Four Thousand Nine Hundred Sixty Pesos and Sixty Seven Centavos (P2,394,360.67) with legal interest;
- To pay a Fine of P2,394,360.67 to the Republic of the Philippines, which amount of fine is equivalent to the malversed funds by the accused;
- To suffer perpetual disqualification from holding any public office or position in the present and the future;
- and,
- To pay costs of suit.

IT IS SO ORDERED.

Hence, the instant appeal, where appellant raised the following issues:

- WHETHER OR NOT THERE ARE PUBLIC FUNDS ALLEGEDLY MALVERSED.
- WHETHER OR NOT THE ACCUSED IS GUILTY OF THE CRIME OF MALVERSION OF PUBLIC FUNDS CHARGED.
- WHETHER OR NOT THE PENALTY OF RECLUSION PERPETUA IMPOSED IS CORRECT CONSIDERING THAT THERE IS NO AGGRAVATING CIRCUMSTANCE.

At the outset, appellant calls our attention to the alleged procedural flaws which led to his prosecution and conviction. First, he claims that the warrantless search in his desk drawer by a co-employee and his warrantless arrest contravened his constitutional rights under the Bill of Rights.[14] Secondly, appellant argues that the trial court erred when it admitted the amended Information which increased the amount allegedly malversed by him to

P2,394,960.67, after he has already entered his plea to the original Information. He claims that the amendment was substantial and the admission of the same placed him in double jeopardy.[15]

These contentions are untenable.

The Constitutional proscription enshrined in the Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State and its agents. The Bill of Rights only tempers governmental power and protects the individual against any aggression and unwarranted interference by any department of government and its agencies.[16] Accordingly, it cannot be extended to the acts complained of in this case. The alleged "warrantless search" made by Roque, a co-employee of appellant at the treasurer's office, can hardly fall within the ambit of the constitutional proscription on unwarranted searches and seizures. The search was done pursuant to the usual practice of Roque whenever appellant was absent.

On the other hand, while it may be stated that appellant was taken into police custody without a valid warrant of arrest, such illegality was, however, deemed cured when appellant applied for bail,[17] entered a plea of "not guilty" during his arraignment,[18] and actively participated in the trial of his case.[19] By so doing, appellant submitted himself to the jurisdiction of the trial court. In *People v. Lagarto*,[20] it was held:

The argument has no merit. CORDERO voluntarily entered a plea of "not guilty" when he was arraigned on 22 August 1994. By so pleading, he submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest, for the legality of an arrest affects only the jurisdiction of the court over his person. Besides, his act of entering a plea when arraigned amounted to a waiver of the right to question any irregularity in his arrest. It is too late for CORDERO to protest his arrest because a valid information had been filed against him, he was properly arraigned, trial commenced and was terminated, and a judgment of conviction had been rendered against him. Besides, his illegal arrest, if such was the fact, did not have any bearing on his liability since an allegation of an invalid warrantless arrest cannot deprive the State of its right to prosecute the guilty when all the facts on record point to his culpability. Any irregularity in his arrest will not negate the validity of his conviction duly proven beyond reasonable doubt by the prosecution.[21]

Regarding the amendment of the Information, the same was amended to conform to what the evidence showed as the total amount of money undeposited and unaccounted for by appellant after the requisite audit examination was further conducted in the Treasurer's Office. The amendment stated with specificity something that was already charged in the Information, and which added nothing essential for convicting appellant for the crime charged. It did not involve a variance of the nature of the offense committed but only a change in the amount involved as the alleged converted public funds. It did not cause a change in the basic theory of the prosecution which would require the appellant to prepare his defense anew. Neither did it expose appellant to a charge that called for a higher penalty beyond that stated in the law. The defense available to appellant under the original Information as it originally stood was still available to him after it was amended.[22] Hence, such amendment was only in form and not in substance, to which no double jeopardy can be said to have attached.

Conviction for malversation of public funds or property under Article 217 of the Revised Penal Code requires proof 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.[23]

It is clear from the facts established in this case that appellant is a public officer[24] occupying the Cash Clerk II position at the City Treasurer's Office. By reason of his position, appellant was tasked to regularly handle public funds every time he deposited the collections of the City Treasurer's Office to the city's depository bank. The fact

that the obligation to deposit the collections of the City Treasurer's Office is not covered by appellant's official job description is of no legal consequence in a prosecution for Malversation. What is essential is that appellant had custody or control of public funds by reason of the duties of his office. He is an employee of, or in some way connected with, the government and, in the course of his employment, he receives money or property belonging to the government for which he is bound to account. Accordingly, what is controlling is the nature of the duties of appellant and not the name or relative importance of his office or employment.[25]

In an attempt to pass accountability for the missing funds of the city, appellant points to the Notice of Charges[26] dated January 14, 1997 and January 31, 1997, respectively, issued by the Commission on Audit, which shows that City Treasurer Juan Hernandez and Cashier IV Nelia De Jesus were responsible for the shortage of city funds. Appellant claims that, therefore, he should not be held liable for the missing funds.[27]

The contention is misplaced.

Appellant himself admitted in open court that he has been regularly tasked to deposit with PNB the daily collections of the Treasurer's Office. Although the duplicate and triplicate copies of every deposit slip could not be obtained immediately after every deposit, appellant was duty bound to account for every deposits he make to PNB.[28] The documentary evidence clearly shows appellant's culpability from which no contrary evidence was presented. 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. Being an accountable officer, appellant may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his accounts which he is unable to explain.[29] As the trial court aptly noted:

x x x The accused's bare denial of not malversing the public funds of Baguio City Treasurer's Office cannot stand a chance of being believed at given the voluminous documentary evidence for the prosecution and testimonies of prosecution's witnesses, showing the culpability of the accused. The undeposited bank slips tallying with the ledgers of the City Treasurer's Office which in turn tally with the Commission on Audit reports, which further tally with Philippine National Bank record of non-deposit, and which finally tally with the accused's attendance in the City Treasurer's Office as shown by his daily time record (DTRs), with the dates of depositing the City's collections to the Bank, are solid evidence of accused's culpability. This is coupled with an observed affluence by the accused during those months of his malversation of Baguio City Governments' funds like in renting a Europa Condominium at P5,000.00 monthly rental for six months in 1996, and accused's joining the derbies with P50,000.00 at stake for each derby and ownership of forty (40) fighting cocks for the derbies. This kind of affluence does not match with accused's monthly salary of P4,273.00 in 1996, pointing to an inescapable conclusion that accused had spent the collections of the City which collections he was supposed to deposit to the Bank, but instead embezzled the same for his personal use and benefit, in betrayal of his oath as a public officer.

x x x, except for the accused's bare denial in the witness stand of not malversing public funds, no other kind of defense was offered by the accused. x x x

On the witness stand, this Presiding Judge had opportunity to observe the demeanor of accused John Peter Hipol while testifying, and this Judge is convinced that the accused is not telling the truth. The accused's evasive look and manner of testifying give the impression to this Judge of a witness who is lying in his teeth.[30]

However, we find merit in appellant's argument that the trial court erred in appreciating the element of taking advantage of public office as an aggravating circumstance. The element of taking advantage of public office is inherent in the crime of malversation of public funds or property under Article 217 of the Revised Penal Code.[31] The said crime can not be committed without the abuse of public office. Also, the fact that the amount

malversed may constitute a crime of economic sabotage cannot be considered to aggravate the penalty to reclusion perpetua, there being no such aggravating circumstance in Article 14 of the same Code.

Under Article 217, paragraph 4 of the Revised Penal Code, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed if the amount involved exceeds P22,000.00. Considering that neither aggravating nor mitigating circumstance attended the crime charged, the maximum imposable penalty shall be within the range of the medium period of reclusion temporal maximum to reclusion perpetua,[32] or eighteen (18) years, eight (8) months and one (1) day to twenty years. Applying the Indeterminate Sentence Law, the minimum imposable penalty, which is one degree lower from the maximum imposable penalty, shall be within the range of prision mayor maximum to reclusion temporal medium, or ten (10) years and one (1) day to seventeen (17) years and four (4) months. Thus, appellant shall be sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum. Moreover, Article 217 provides:

ART. 217. x x x

x x x x x x x x

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. x x x.

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Angeles City, Branch 59, in Criminal Case No. 14716-R, convicting appellant John Peter Hipol of Malversation of Public Funds as defined and penalized under Article 217 of the Revised Penal Code is AFFIRMED with MODIFICATION. Appellant is sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, to indemnify the Baguio City Government the amount of P2,394,960.67, with legal interest, to pay a fine of P2,394,960.67, to suffer perpetual disqualification from public office, and to pay the costs of the suit.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Rollo, p. 54.

[2] RTC Record, Vol. 1, p. 64.

[3] TSN, 9 December 1997, p. 6.

[4] RTC Record, Vol. 1, p. 70.

[5] TSN, 9 December 1997, p. 9; TSN, 15 December 1997, pp. 8 & 9.

[6] TSN, 18 June 1997, pp. 23-24.

[7] Folder of Exhibits (1); Exhibit "D".

[8] Id., Exhibit "E".

[9] Id., Exhibit "F".

[10] TSN, 8 July 1997, pp. 5-7.

[11] Folder of Exhibits (2); Notice of Charges, 14 January 1997.

Exhibits Dates Amounts

(Undeposited PNB Bank Slips)

"P" October 3, 1996 48,103.65

"Q" September 23, 1996

24,381.52

"R" July 31, 1996 39,944.42

"S" March 26, 1996 201,202.93

"V" September 4, 1996 54,017.24

"W" August 29, 1996 65,817.60

"X" July 5, 1996 43,620.35

"Y" July 19, 1996 32,780.89

"Z" June 28, 1996 48,931.90

"AA" May 23, 1996 93,924.79

"BB" May 22, 1996 175,974.23

Missing bank deposit slip October 22, 1996 230,371.05

T O T A L 1,097,063.44

[12] RTC Decision, p. 3; Folder of Exhibits (1), Exhibit "C"; Folder of Exhibits (2), Exhibits "ZZ" , "ZZ-2", "ZZ-3" and "CCC".

[13] Penned by Judge Eliezer R. De Los Santos, now Associate Justice of the Court of Appeals.

[14] Rollo, p. 150

[15] Id., p. 170.

[16] People v. Ordoño, G.R. No. 132154, 29 June 2000, 334 SCRA 673; People v. Marti, G.R. No. 81561, 18 January 1991, 193 SCRA 57.

[17] RTC Record Vol. 1, pp. 58-59.

[18] Id., p. 64.

[19] People v. Arnold Bacula-an Lapitaje, et al., G.R. No. 132042, 19 February 2003.

[20] G.R. Nos. 118828 & 119371, 29 February 2000, 326 SCRA 693 citing People v. Nazareno, 329 Phil. 16 [1996]; People v. Pat. Nitcha, 310 Phil. 287 [1995]; People v. Llenaresas, G.R. No. 100462, 29 September 1995, 248 SCRA 629; People v. Silan, 324 Phil. 785 [1996]; People v. Manzano, G.R. No. 108293, 15 September 1995.

[21] Id., p. 749.

[22] *Gabionza vs. Court of Appeals*, G.R. No. 140311, 30 March 2001, 355 SCRA 759; *People v. Casey*, No. L-30146, 24 February 1981.

[23] *Querijero v. People*, G.R. 153483, 14 February 2003 citing *Madarang v. Sandiganbayan*, *supra.*; *Rueda, Jr. v. Sandiganbayan*, G.R. No. 129064, 29 November 2000, 346 SCRA 341; *Diego v. Sandiganbayan*, G.R. No. 139282, 4 September 2000, 339 SCRA 592; *Estrella v. Sandiganbayan*, *supra.*; *Enriquez v. People*, G.R. No. 119239, 9 May 2000, 331 SCRA 538; *People v. Pepito*, 335 Phil. 37 [1997].

[24] Art. 203. Who are public officers. - For the purpose of applying the provisions of this and the preceding titles of this book, any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer (Emphasis ours).

[25] *Quiñon v. People*, G.R. No. 136462, 19 September 2002 citing *Aquino*, Revised Penal Code, Vol. II, [1997], p.484.

[26] Folder of Exhibits (2), Exhibits "ZZ-1" & "ZZ-2".

[27] Rollo, p. 156.

[28] TSN, 9 December 1997, pp. 11-14.

[29] *People v. Pepito*, *supra.*

[30] RTC Decision, pp. 4 & 5.

[31] *Reyes*, The Revised Penal Code, Vol. I, [2001], p. 328.

[32] Art. 27. Reclusion perpetua - the penalty of reclusion perpetua shall be from twenty years and one day to forty years [Revised Penal Code].

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