

LACEPI T. MAGNANAO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 140833. November 29, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari challenges the November 15, 1999 decision[1] of the Sandiganbayan in A.R. No. 020 affirming the judgment of the Regional Trial Court[2] (RTC) of Davao City in Criminal Case No. 36609-96 finding petitioner Lacepi T. Magnanao guilty of malversation of public funds.

The case stemmed from an Information charging petitioner as follows:

That sometime in or about January 1989, or shortly thereafter, in Davao City,... the above-named accused, a public officer, being then the Local Treasury Operation Officer IV of Davao City, and as such, an accountable officer entrusted with and responsible for public funds, namely, realty taxes, collected and received by him by reason of his office, did there and then wilfully, unlawfully and feloniously take, embezzle, misappropriate and convert to his own personal use and benefit the amount of FORTY-TWO THOUSAND FIVE HUNDRED FORTY PESOS & NINETEEN CENTAVOS (P42,540.19) he received for and in behalf of the City Treasurer of Davao City from Sirawan Food Corporation as payment for realty taxes, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.[3]

It was filed in the RTC[4] of Davao City where the following facts were established during trial.

Petitioner was a local treasury operation officer IV of Davao City assigned as district treasurer of the Buhangin District. On January 11, 1989, he received a P45,540.19 manager's check[5] from Sirawan Food Corporation (SFC) as payment for SFC's real property tax. He issued an official receipt to acknowledge the payment. He thereafter took an amount equivalent to the check's value from his cash collections and replaced it with the manager's check. In his liquidation report, however, he stated that he received from SFC only P3,000 as real property tax which he remitted to the city treasury.

When petitioner was asked to explain the discrepancy, he explained that when SFC's representative came to pay the corporation's real property tax, he computed the actual tax liability of SFC and found that only P3,000 was due from it. Since the amount of the check was more than the tax due, he took the difference (P42,540.19) from his cash collections and returned it to SFC's representative.

The trial court found petitioner guilty as charged:

WHEREFORE, this Court finds the accused, Lacepi T. Magnanao, guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code and, applying the Indeterminate Sentence Law, sentences him to an indeterminate penalty of ten (10) years, four (4) months, and one (1) day of prision mayor to twenty (20) years of reclusion temporal and to pay a fine in the amount of

P42,540.19 and is further sentenced to suffer perpetual special disqualification to hold public office.[6]

Petitioner appealed to the Sandiganbayan but the special criminal court adopted the findings of the trial court and affirmed the RTC decision with modification, ordering petitioner to pay the city government of Davao P42,540.19 as civil indemnity. Thus, this petition.

Petitioner contends that there was no sufficient evidence to sustain his conviction for malversation of public funds. Was petitioner's guilt proven beyond reasonable doubt? It was.

Malversation of public funds is defined and penalized under Article 217 of the Revised Penal Code:

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 neglect, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of misappropriation or malversation of such funds or property....

xxx xxx xxx

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such funds or property to personal use.

The crime has the following elements:

- (1) the offender is a public officer;
- (2) he has custody or control of funds or property by reason of the duties of his office;
- (3) the funds or property are public funds or public property for which he was accountable and
- (4) he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.[7]

All these elements were proven.

It was not disputed that petitioner, as local treasury operation officer of Davao City, was a public officer. Part of his duties was to accept payments for real property taxes. In this connection, the city treasurer[8] of Davao City testified that petitioner received a manager's check for P45,540.19 from SFC as payment for real estate taxes for which he issued an official receipt. This was corroborated by SFC's representative.[9] Petitioner himself admitted receiving the check and issuing the receipt. Thus, by reason of the duties of his office, he had in his custody public funds in the amount of P45,540.19 for which he was accountable.

Petitioner further admitted that, of the P45,540.19 which he received from SFC, he remitted only P3,000 to the city coffers. When required by the city treasurer to account for the difference, petitioner claimed it represented the P42,540.19 which he took from his cash collections and handed to SFC's representative – a claim both the RTC and Sandiganbayan rejected as self-serving and unsubstantiated.

Petitioner's failure to account for the P42,540.19 in public funds upon demand by his superior gave rise to the presumption that he had converted the funds for his personal use. He never rebutted the presumption, hence, it stands. Indeed, if he actually received P3,000 only, then why did he issue a receipt for P45,540.19? The only logical conclusion was that he appropriated the money for himself.

It is clear from the foregoing that the evidence presented to establish petitioner's guilt passed the test of moral

certainty.

WHEREFORE, the petition is hereby DENIED and the November 15, 1999 decision of the Sandiganbayan in A.R. No. 020 AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Penned by Associate Justice Rodolfo G. Palattao (retired) and concurred in by Associate Justices Narciso S. Nario (retired) and Godofredo L. Legaspi of the Fourth Division of the Sandiganbayan; rollo, pp. 29-37.

[2] Branch 10, presided by Judge Augusto V. Bрева.

[3] Quoted in the Sandiganbayan decision, supra note 1.

[4] Branch 10. The case was docketed as Criminal Case No. 36609-96.

[5] China Banking Corporation check no. 24980.

[6] Decision dated May 4, 1998, penned by Judge Augusto V. Bрева; rollo, pp. 38-51.

[7] Pondevida v. Sandiganbayan, G.R. Nos. 160929-31, 16 August 2005, 467 SCRA 219.

[8] Leonardo Dinopol.

[9] Atty. Inobobby Pinili.

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