ROMEO L. DAVALOS, SR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 145229. April 24, 2006

Ponente: GARCIA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-145229/

GARCIA, J.:

Before us is this petition for review on certiorari seeking the reversal of the Decision[1] of the Sandiganbayan[2] promulgated on October 6, 2000 in Criminal Case No. 18003, convicting petitioner Romeo L. Davalos, Sr., of the crime of malversation of public funds and sentencing him to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, to suffer perpetual special disqualification, and to pay a fine of P18,000.00 plus costs.

On September 7, 1992, Special Prosecution Officer Reynaldo L. Mendoza filed with the Sandiganbayan an Information[3] charging petitioner with malversation of public funds, allegedly committed, as follows:

> That on or about January 14, 1988, or immediately prior and subsequent thereto, in Boac, Marinduque, and within the jurisdiction of this Honorable Court, accused being then the Supply Officer of Boac, Marinduque, hence accountable for public funds and property collected and received by reason of his official position, with grave abuse of confidence, did then and there, willfully and unlawfully take, misappropriate and embezzle from said funds the total amount of EIGHTEEN THOUSAND PESOS (P18,000.00), to the damage and prejudice of the Government.
>
> Contrary to law.

Arraigned on January 25, 1993, petitioner, assisted by counsel, entered a plea of "Not Guilty"[4] and waived the pre-trial. Thereafter, trial ensued.

Culled from the records are the following pertinent facts:

On January 14, 1988, petitioner Davalos, as supply officer of the Office of the Provincial Engineer of Marinduque, received from the provincial cashier a cash advance of P18,000.00 covered by Philippine National Bank (PNB) Check No. SN-189833-N[5] for the procurement of working tools for a certain "NALGO" project. Petitioner's receipt of the amount is evidenced by his signature appearing in Disbursement Voucher No. 103-880-08.[6]

On May 5, 1988, petitioner received a demand letter[7] from then Provincial Treasurer Timoteo Magalang giving him until May 16, 1988 to submit a liquidation of the aforementioned P18,000.00 cash advance. This was followed by another letter[8] received by petitioner on May 26, 1988, giving him this time up to May 31, 1999 to settle his account. But as in the first instance, the second demand went unheeded.

In a letter dated August 16, 1990, the new Provincial Treasurer, Norma Cabungal, informed the Provincial Prosecutor of Marinduque of the Commission on Audit's findings on the examination of the cash accounts of the province wherein petitioner was found to have an unsettled cash advance in the amount of P18,000.00.

During the trial, petitioner testified being, at the time material to the case, the supply officer of the Office of the Provincial Engineer of Marinduque. His functions, according to him, include taking care of office properties and purchasing the necessary materials and supplies as needed by their office. As such, he was also referred to as the procurement officer.

Petitioner admitted receiving the P18,000.00 cash advance intended to purchase working tools for the "NALGO" project. He, however, denied allegations that he misappropriated the said amount.

He testified, too, that, albeit the purchase order (PO) for the said tools were already approved by the provincial treasurer and the provincial auditor, the new administration decided to scrap the proposed transaction. According to petitioner, following the assumption to office of Governor Luisito Reyes, his office files containing the said PO and the requisition paper were taken and his services terminated per Governor Reyes' Memorandum No. 88-63[9] dated November 23, 1988. Said memorandum also stated that "should you apply for the commutation/payment of your unused leave/vacation and sick/credits, the same may be approved provided it is first applied/charged to your unliquidated cash advance of P18,000.00." Pressing the point, petitioner stated that he then applied for his terminal leave and other benefits through the following summary of vouchers which he personally prepared, but were then disapproved:

> 1) Disbursement Voucher (DV) dated May 13, 1991, for the commutation payment of the 145 vacation leaves of absence with pay from May 1, 1988 to November 2, 1988 in the amount of P7, 022.87;[10]
>
> 2) DV dated May 13, 1991, for the payment of accrued terminal leave from November 23, 1988 to January 10, 1990 in the amount of P14, 055.82;[11]
>
> 3) DV dated May 13, 1991, for the payment of Cash Gift and Year End Benefit in the amount of P2,043.00;[12] and
>
> 4) DV dated May 13, 1991, for the payment of Cost of Living Allowance from June 1, 1988 to November 22, 1988 in the amount of P1,146.67.[13]

Petitioner then went on to declare that Gov. Reyes was out to harass him, hence the disapproval of the above-mentioned vouchers. Despite his belief that he was then no longer obligated to liquidate his P18,000.00 cash advance, petitioner nonetheless settled his account, as evidenced by OR No. 1987018[14] dated January 27, 1995. To prove his point, petitioner presented an undated letter of the provincial accountant addressed to the Office of the Sangguniang Panlalawigan stating, among other things, that he had already settled his cash advance of P18,000.00[15]

When confronted with Governor Reyes' Memorandum regarding his summary dismissal from the service for abandoning his post for four (4) months since July 15, 1988, and for other acts of misconduct and other offenses, petitioner merely denied all those charges. As to the charge of abandonment, petitioner argued that he was entitled to vacation leave and that he had filed an application for commutation of his leave from May 1, 1988 up to November 22, 1988. He also brushed aside the charge of malversation and declared that he had already been relieved of his accountabilities by the Commission on Audit. He, however, admitted receiving from the provincial treasurer the two demand letters earlier adverted to dated May 5, 1988 and May 26, 1988 requiring him to submit his liquidation of the P18,000.00 cash advance on the dates respectively indicated therein.

On re-direct examination, petitioner denied abandoning his office, having, according to him, filed his application for leave of absence covering the period from May 1, 1988 up to November 22, 1988.

On re-cross examination, petitioner testified being sick during the entire period covered by his leave application. As regards the purchase of the working tools for which he received the P18,000.00 cash advance, petitioner

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

declared that he actually made a down payment of P11,000.00. He did not, he added, return the balance of P7,000.00 at the time he received his termination paper because he relied on Governor Reyes' Memorandum purportedly allowing him to offset the P18,000.00 from the terminal benefits due him. He later stated in his testimony, however, that the reason he did not give back the balance of P7,000.00 was because he wanted to return the whole amount of P18,000.00.

Petitioner likewise testified that the receipt evidencing the down payment of P11,000.00 for the tools bought was lost; that he went back to the seller in Manila to secure a copy of the lost receipt and brought the tools with him in order to return the same, but the irked seller wanted him to maintain the transaction. As a result, he was able to recover only half of the down payment or P5,500.00. The other P5,500.00 was retained by the seller to answer for the damages suffered by the latter. Consequently, he has in his possession P12,500.00 (the remaining original balance of P7,000.00 plus the recovered amount of P5,500.00).

On June 30, 2000, the Sandiganbayan rendered its decision, finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds and sentencing him accordingly. Dispositively, the decision reads:

> WHEREFORE, judgment is hereby rendered finding accused ROMEO L. DAVALOS, SR. GUILTY of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code and, taking into account the existence of a mitigating circumstance, sentencing the said accused to: (a) suffer an indeterminate sentence of imprisonment of ten (10) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum; (b) suffer all the appropriate accessory penalties consequent thereto, including perpetual special disqualification; (c) pay a fine of Eighteen Thousand (P18,000) ; and (d) pay the costs.

Hence, this petition.

The crime of malversation of public funds is defined and penalized under Article 217 of the Revised Penal Code, viz:

> 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 of malversation of such funds or property, shall suffer:
>
> x x x x x x x x x
>
> 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 missing fund or property to personal uses.

The elements essential for the conviction of an accused under the above penal provision 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.

There can hardly be no dispute about the presence of the first three elements. Petitioner is a public officer occupying the position of a supply officer at the Office of the Provincial Engineer of Marinduque. In that

capacity, he receives money or property belonging to the provincial government for which he is bound to account. It is the last element, i.e., whether or not petitioner really has misappropriated public funds, where the instant petition focuses itself on.

In the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary[16] as long as the accused cannot explain satisfactorily the shortage in his accounts.

In convicting petitioner, the Sandiganbayan cites the presumption in Article 217, supra, of the Revised Penal Code, i.e., 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, is prima facie evidence that he has put such missing fund 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 never deemed to have existed at all.[17] In this case, however, petitioner failed to overcome this prima facie evidence of guilt.

Petitioner does not at all dispute the fact that he did receive a cash advance of P18,000.00 for the purchase of tools for the "NALGO" project. He also admitted receiving the demand letters of the provincial treasurer for him to submit a liquidation of the cash advance on two occasions, which he failed to do. This notwithstanding, he persists on arguing that he cannot be convicted of malversation of public funds. He harps on Memorandum No. 88-63 issued by then Marinduque Governor Reyes that he can offset his unliquidated cash advance of P18,000.00 from the commutation of his unused vacation and sick leave credits to justify his failure to liquidate his cash advance. He also invites attention to the fact that, even before the approval of his application for the commutation of his leave credits, he already paid his cash advance of P18,000.00 on January 27, 1995.

Petitioner's attempt at rationalization for his failure to liquidate is unacceptable. Memorandum No. 88-63 merely informed petitioner that his application for commutation may be granted provided that the commutated amount is first applied to his unliquidated cash advance of P18,000.00. Nowhere in the said memorandum did it state that he is exempted from submitting his liquidation of the same cash advance. As it is, petitioner failed to liquidate and return his cash advance despite repeated demands. He was able to return the said amount only on January 27, 1995, that is, after almost seven (7) years from the last demand. His declaration about making a down payment of P11,000.00 for the alleged purchase of some tools pursuant to the requisition of the local government is gratuitous at best. There is nothing on record to support his claim and there is nothing to show that he turned over the possession of the said tools to the government. Moreover, he admitted retaining or keeping the balance of P7,000.00 (or P12,500.00 as he later claimed). The only logical conclusion then is that he misappropriated and personally benefited from the cash advance of P18,000.00. In Kimpo vs. Sandiganbayan,[18] we held:

> ". In malversation of public funds, payment, indemnification, or reimbursement of funds misappropriated, after the commission of the crime, does not extinguish the criminal liability of the offender which, at most, can merely affect the accused's civil liability thereunder and be considered a mitigating circumstance being analogous to voluntary surrender.

Here, the return of the said amount cannot be considered a mitigating circumstance analogous to voluntary surrender considering that it took petitioner almost seven (7) years to return the amount. Petitioner has not advanced a plausible reason why he could not liquidate his cash advance which was in his possession for several years.

WHEREFORE, the assailed decision of the Sandiganbayan in its Criminal Case No. 18003 is hereby AFFIRMED in toto and this petition is DENIED for lack of merit.

SO ORDERED.
Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.
Puno, (Chairperson), J., on leave.

---

[1] Penned by Associate Justice Gregory S. Ong, and concurred in by then Presiding Justice Francis E. Garchitorena (deceased) and Associate Justice Catalino R. Castañeda (retired); Rollo, pp. 31-48.

[2] First Division.

[3] Sandiganbayan Rollo, p. 1

[4] Id. at 48.

[5] Exhibit "B," folder of exhibits.

[6] Exhibit "A," folder of exhibits.

[7] Exhibit "C," folder of exhibits.

[8] Exhibit "C-1," folder of exhibits.

[9] Exhibit "1," folder of exhibits.

[10] Exhibit "2," folder of exhibits.

[11] Exhibit "3," folder of exhibits.

[12] Exhibit "4," folder of exhibits.

[13] Exhibit "5," folder of exhibits.

[14] Exhibit "6," folder of exhibits.

[15] Exhibit "7," folder of exhibits.

[16] Sarigumba vs. Sandiganbayan, G.R. No. 154239-41, February 16, 2005, 451 SCRA 533, 554.

[17] Agullo vs. Sandiganbayan, 414 Phil. 86 (2001).

[18] G.R. No. 95604, April 29, 1994, 232 SCRA 53, 62.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.