NARCISO C. LOGUINSA, JR., PETITIONER, VS. SANDIGANBAYAN (5TH DIVISION), RESPONDENT.

G.R. No. 146949. February 13, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure which seeks to reverse and set aside the following: (a) the Decision[1] promulgated on March 8, 2000 affirming the ruling of the Regional Trial Court, Mati, Davao Oriental, Branch 5 that petitioner is guilty beyond reasonable doubt of the crime of Malversation of Public Funds; (b) the Resolution[2] promulgated on September 13, 2000 denying petitioner's Motion for Reconsideration; and (c) the Resolution[3] promulgated on October 13, 2000 denying petitioner's Motion to Suspend Proceedings, which Decision and Resolutions were all issued by the respondent court, Sandiganbayan, Fifth Division in A/R Case No. 031 entitled "People of the Philippines v. Narciso C. Loguinsa, Jr."

The facts of this case, as gathered from the assailed Sandiganbayan Decision, are as follows:

> On March 23, 1993, Enrique B. Lapore, Provincial Auditor of Mati, Davao Oriental, issued PSS Office No. 93-301 creating Special Audit Teams to conduct Financial and Compliance Audit on the Municipalities of Banaybanay, Manay, San Isidro and Boston, and Cash Examination of their respective Municipal Treasurers. On March 29, 1993, in compliance with said Order, a team composed of State Auditor II Robert J. Lumpay, as team leader, State Auditor I Luzmille O. Pilar and State Auditing Examiner II Herminda Chongco, as members, proceeded to the Municipality of Banaybanay, Mati, Davao Oriental, and conducted a Cash Examination of the Cash and Accounts of accused-appellant Narciso C. Loguinsa, Jr. [Loguinsa], Municipal Treasurer of the Municipality of Banaybanay, Davao Oriental.
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> The auditing team demanded from appellant to present all his cash accounts inside the safe vault. Appellant opened his safe vault in the presence of Assistant Municipal Treasurer Melinde Conson, Budget Officer Mario Gentiles and Lumpay. Found inside the vault were the cashbooks for the General Fund, INFRA, SEF, NALGU and Trust Fund. Using a coupon bond with a notation DON'T BREAK THE SEAL UNDER PENALTY OF LAW and which was signed by Conson and Gentiles, the safe vault was sealed. Thereafter, Lumpay examined the journals and ledgers in the accounting section in order to reconcile the cash book balances posted for the period June 17, 1992 to March 29, 1993 and those entered in the ledgers. He found no difference in the INFRA, SEF, NALGU and Trust Fund, but as to the General Fund Cashbook, which cashbook was personally prepared by the appellant, there appeared a shortage in the amount of P1,728,145.35. Lumpay also found that the balances in the cashbook agreed with the balances in the general ledgers. It was State Auditor Pilar who prepared the back reconciliation statements, while it was State Auditing Examiner Chongco who prepared the inventory of all accountable forms, and who conducted the cash count of the collections liquidated by the collectors and turned over to Conson. The total amount remitted to Conson was P64,674.87.
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> The conduct of the cash examination lasted for three weeks. Lumpay prepared the Report of Cash Examination using General Form 74(A). Lumpay gave the accused a copy of the report. Upon seeing the report, accused

affixed his signature thereto.

In view of the findings of the audit team, Lumpay in a letter dated May 12, 1993 demanded from the appellant to produce immediately the missing funds amounting to P1,728,145.35, and to submit within seventy-two (72) hours a written explanation on how this shortage occurred.

On May 20, 1993 Lumpay received a letter from Loguinsa dated May 19, 1993 requesting that he be furnished with a copy of the complete details of the audit examination, together with its attachments. In response to this request, Lumpay, on May 21, 1993, furnished appellant a copy of the cash examination report. As there was no answer from the appellant, Lumpay, through a letter dated May 26, 1993, reiterated his demand for appellant to immediately produce the missing funds, together with a written explanation, within seventy-two (72) hours on why the shortage was incurred.

In a letter dated May 26, 1993, Lumpay informed Banaybanay Municipal Mayor Pedro T. Mejos on the shortage contracted by the accused. He likewise informed the Mayor of the demand made on the appellant to restitute the amount of P1,728,145.35 and recommended the immediate relief of the accused as Municipal Treasurer.

On August 12, 1993 Lumpay submitted a Memorandum to Provincial Auditor Lapore regarding the findings of the audit team and the corresponding demand made on the appellant. The Provincial Auditor furnished the Department of Finance (DOF) a copy of the Memorandum.

On December 6, 1993 Provincial Treasurer Antonio P. Quilala issued Office Order No. 33-93 directing Maximo D. Tanzo, Lupon Municipal Treasurer, and Anecita A. Plaza, Administrative Officer II of the Office of the Provincial Treasurer, to conduct an investigation on the cash shortage of appellant.

At around the middle of February 1994, in the Office of the Municipal Treasurer of Banaybanay, Tanzo and Plaza started their investigation. Prior to conducting the investigation, they borrowed the five cashbooks stored in the office of the Provincial Auditor and brought it to Banaybanay. The period covered by the investigation was from June 7, 1992 to March 29, 1993. They requested from Melinde G. Conson, who at that time was the acting Municipal Treasurer of Banaybanay, all the documents relating to the transactions entered in the cashbooks.

On February 21, 1994, Mrs. Plaza handed to appellant a letter of Tanzo inviting him to appear before them on March 1, 1994 at the Office of the Municipal Treasurer to apprise him of their findings regarding his account.

On March 1, 1994, appellant came to the meeting held at the Office of the Municipal Treasurer but refused to sign any document and to answer questions propounded to him regarding the results of the cash verification. After the meeting, they prepared a statement of the accountability of the appellant. On June 27, 1994, they submitted their findings to Quilala, which confirmed the shortage run up by appellant amounting to P1,728,145.35.

On April 4, 1995, the Regional Director of the Bureau of Local Government Finance (BLGF), Region XI, formally charged accused with Dishonesty thru Malversation of Public Funds.

After the investigation conducted by the BLGF, the hearing officer recommended the dismissal of the case. However, on review by the BLGF Central Office, appellant was found guilty of Dishonesty thru Malversation of Public Funds and accordingly meted the penalty of dismissal from the government service with all the accessory penalties attached thereto.

On December 27, 1994, accused-appellant was charged with Malversation before this Court in an Information, the accusatory portion of which reads:
That on or about March 29, 1993, or sometime prior or subsequent thereto in Banaybanay, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer

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> being then the Municipal Treasurer of the same municipality, and as such is an accountable officer, entrusted with and responsible for public funds collected and received by him, by reason of his position while in the performance of his official functions, taking advantage of his position, did then and there willfully, unlawfully and feloniously misappropriate, embezzle, take away and convert for his personal benefit the amount of ONE MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND ONE HUNDRED FOURTY (sic) FIVE AND THIRTY FIVE CENTAVOS (P1,728,145.35) PESOS, Philippine Currency, from such funds, thereby causing damage and prejudice to the government in the aforementioned amount.
>
> CONTRARY TO LAW.

On January 4, 1995, this Court issued an order for the arrest of accused-appellant. A Hold Departure Order was issued on January 5, 1995.

On January 17, 1995, bondsmen Leopoldo Y. Lopez IV and Ma. Elena Lopez Adaza posted a property bond for the provisional liberty of accused-appellant.

With the passage of Republic Act No. 7975, which took effect on May 6, 1995, the instant case, by resolution of this Court dated July 4, 1995, was remanded to the Executive Judge of the Regional Trial Court of Mati, Davao Oriental, The case was raffled to Branch 5 of the same Court.

On December 21, 1995, accused, assisted by counsel, pleaded "not guilty" to the crime charged.

After trial, the lower court rendered a guilty verdict.[4]

The dispositive portion of the trial court's Decision[5] dated February 16, 1999 reads as follows:

> WHEREFORE, the Court finds the accused Narciso C. Loguinsa, Jr., guilty beyond reasonable doubt as principal of the crime of Malversation of Public Funds defined in Article 217, par. 4, Revised Penal Code, and there being no modifying circumstances, imposes upon him the indeterminate penalty ranging from TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal, as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum; to suffer perpetual special disqualification; to pay a fine of P1,728,145.35; to indemnify the Municipal Government of Banaybanay, Davao Oriental, the aforesaid amount of P1,728,145.35, and to pay the costs of the proceedings.[6]

The above Decision was appealed before the respondent Sandiganbayan which, in turn, affirmed in toto the same in its March 8, 2000 Decision.[7]

Petitioner thereafter filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, which motions were opposed by the prosecution. Pending resolution of these motions, petitioner filed before the respondent court a motion requesting that the proceedings before it be suspended "pending the outcome and termination of his request for a re-audit and review of his Cash and Accounts." The prosecution opposed this motion.

In its September 13, 2000 Resolution,[8] the respondent court denied petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration.

Petitioner again filed before the respondent court a Motion for Reconsideration. Considering that petitioner's Motion for Reconsideration was already a second motion for reconsideration, the prosecution moved on October 13, 2000, during the hearing set for the said motion, that the same be denied by the respondent court. The respondent court ruled in favor of the prosecution.

In a Resolution[9] promulgated on October 13, 2000, the respondent court likewise denied petitioner's Motion to Suspend Proceedings.

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Feeling aggrieved with the findings of the respondent court, petitioner filed the instant petition before this Court. Initially, the petition was dismissed for various procedural defects but upon motion of petitioner Loguinsa, this Court reconsidered the dismissal in a Resolution dated June 20, 2001.

In his Petition and Memorandum, Loguinsa essentially raises the following issues:

> - Whether or not respondent Court gravely erred in not declaring that the examination and audit report prepared by the Audit Team is contrary to law.
>
> - Whether or not petitioner's constitutional right to due process was denied when the pleas of petitioner for a re-audit and review of his case and account had been denied outright by respondent Court.
>
> - Whether or not the trial Court and respondent Court also erred in ruling that the guilt of petitioner has been proven beyond reasonable doubt.[10]

After a thorough consideration of the issues raised and the evidence on record, we hold that the instant petition to be unmeritorious.

Anent the first issue, petitioner maintains that his conviction on the basis of General Form No. 74(A) entitled "REPORT OF CASH EXAMINATION," which bore his signature, instead of the Cashbooks of General Fund, records of collection and disbursements, is contrary to law. The auditors and prosecutors failed to pinpoint the actual collections made but not deposited in the depositary banks and the actual withdrawals made to complete the alleged shortage of P1,728,145.35 which allegedly made the audit of petitioner's accounts not thorough, objective or complete. Furthermore, petitioner insists that the fact that he signed the cash examination report should not have been understood that he admitted his shortage, it only meant that an acknowledgment or a demand on him to produce his shortage had been made. In fact, petitioner asserts that he never admitted his shortage.[11]

We find the above claims to be untenable. The records will bear out that the judgment of conviction on petitioner that was handed down by the trial court did not merely rely on General Form No. 74(A) or the cash examination report alone. The prosecution presented several pieces of documentary evidence in order to establish its case. It also introduced the testimonies of witnesses Commission on Audit (COA) State Auditor II Robert Lumpay and Lupon Municipal Treasurer Maximo Tanzo who were involved in the first and second government audits respectively that led to the discovery and later confirmation of the shortage in petitioner's accounts. It also introduced the testimony of witness Banaybanay Assistant and later Acting Municipal Treasurer Melinde G. Conson.[12]

In appeals to this Court from the Sandiganbayan, only questions of law may be raised, not issues of fact. The factual findings of the Sandiganbayan are binding upon this Court. Admittedly, this general rule is subject to some exceptions, among them are: (1) when the conclusion is a finding grounded entirely on speculation, surmise or conjecture; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion on the part of the lower court or agency; (4) the judgment is based on a misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact by the Sandiganbayan are premised on the absence of evidence on record.[13]

In the case at bar, we do not find any of the above exceptions to be present as to compel us to veer away from the facts established by the trial court and affirmed by respondent Sandiganbayan.

As correctly stated in the assailed Sandiganbayan Decision, the failure of the prosecution to present and have the Cashbooks of General Fund marked in evidence does not necessarily exonerate petitioner. The conviction of the petitioner was based on the testimonies of witnesses and other documentary exhibits of the prosecution. It is the prerogative of each party to determine which evidence to submit therefore herein petitioner cannot dictate or

impose on the prosecution during the lower court trial as to who or what documentary evidence it should present.[14] Section 5, Rule 110 of the Revised Rules on Criminal Procedure expressly provides that all criminal actions shall be prosecuted under the direction and control of the fiscal and what prosecution evidence should be presented during the trial depends solely upon the discretion of the prosecutor.[15]

Moreover, as aptly pointed out in the assailed Sandiganbayan Decision, the cash examination report contains entries made in the performance of official functions and is, thus, sufficient by itself to establish prima facie the truth of the facts stated therein without the need of presenting other evidence following the rule laid down by Section 44, Rule 130 of the Revised Rules of Evidence.[16]

Indeed, if the Cashbooks of General Fund contained information that would exonerate petitioner, petitioner himself, after the prosecution had presented its evidence, should have presented the said cashbook in evidence before the trial court. He could have availed of any number of court processes to compel the auditors to produce the Cashbooks but strangely enough, he did not.

As regards to petitioner's claim that his signature on the cash examination report does not in any way equate to an admission of the shortage reflected therein, we find the same to be incredulous given that the natural presumption is that a person does not sign an official document, such as General Form No. 74(A) or cash examination report in this case, in blank (as petitioner claims) or without first informing himself of its contents. Petitioner, who was a ranking government treasurer thus conceivably a person of stature and intelligence, is presumed, by common logic, to know better than sign any document which he knows would render him responsible, administratively or even criminally. In signing the assailed document, petitioner acknowledged and certified that the amount therein stated is his accountability. Only substantial evidence showing the contrary can possibly counteract such a documentary acknowledgment. As borne out by the records of the instant case, petitioner was unable to present such proof.

Similarly, we do not agree with petitioner's assertion that mere reliance on the fact that he signed the assailed General Form No. 74(A) is not enough to establish his admission of the alleged shortage in his accounts in light of our pronouncement in the case of Tinga v. People[17] where this Court held that "it is incorrect to state that petitioner-accused had admitted his shortage when he signed the audit report prepared by the audit team."[18] We find that the facts in that case to be in variance with those found in the case at bar.

In Tinga, there was a dispute as to the amount of shortage because the audit team failed to consider certain records and past transactions of the defendant, which were only brought to light after the audit. Thus, this Court declared that there was an incomplete and haphazard compliance with the Manual of Instructions to Treasurers and Auditors and Other Guidelines in the examination made by the audit team.[19] We also ruled in that case that the prima facie presumption under Article 217 of the Revised Penal Code arises only if there was no issue as to the accuracy, correctness and regularity of the audit findings and if the fact that the funds are missing is indubitably established.[20] Moreover, in Tinga, the Sandiganbayan itself decreed that the audit conducted by the COA audit team was riddled with errors which were borne out by the evidence on record.

In the case at bar, we find the first audit made by the COA personnel led by COA State Auditor II Lumpay and the second audit made by Lupon Municipal Treasurer Tanzo with Office of the Provincial Treasurer Administrative Officer II Plaza to be in proper order. The undisputed facts bear out that the COA audit team from the Provincial Auditor's Office of Davao Oriental led by Lumpay conducted its three-week cash examination in the presence of petitioner. Thereafter, Lumpay prepared the cash examination report using General Form No. 74(A) of which he gave a copy to petitioner, who in turn voluntarily affixed his signature thereto upon seeing the report. The facts clearly showed that not only the journal and ledgers were examined by the team but most

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importantly the cashbooks from which the shortage of P1,728,145.35 was discovered. If petitioner's assertion before this Court is to be believed that the Lumpay audit examination had no basis because this was not supported by the entries in the cashbooks, then he should not have signed General Form No. 74(A). Moreover, the findings of the Lumpay audit examination were verified by the second, separate and independent audit conducted by Tanzo and Plaza who thereafter prepared a statement of the accountabilities of petitioner which was also presented in evidence in the trial court. Thus, the accuracy and correctness of both audits (which unfortunately for petitioner resulted the same finding of shortage on his part) have not been successfully impugned.

Petitioner puts forward as his second assignment of error the assertion that his constitutional right to due process was denied when his pleas for a re-audit and review of his case and account had been denied outright by respondent court.

We hold the same to be untenable since such a request by petitioner is not sanctioned by the Rules of Court as the case is already on appeal. He should have prayed for such a re-audit before the trial court and not for the first time on appeal before the respondent Sandiganbayan.

The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[21] In the case at bar, a perusal of the records would indicate that petitioner was not denied any of the above due process guarantees that would warrant the respondent court to review the factual findings of the court a quo and to order a re-audit of the process that uncovered the shortage in petitioner's accounts.

The findings of fact of the trial court, its calibration of the testimonies of witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded by the appellate court high respect if not conclusive effect.[22] Well-settled is the rule that unless the trial court overlooked, misunderstood, or misapplied some facts of substance and value which, if considered, might affect the outcome of the case, its findings carry great weight and will not be disturbed on appeal.[23] In line with our earlier conclusion that the first and second audits at issue were in proper order, we find that the respondent Sandiganbayan did not err in denying petitioner's request for a re-audit.

Likewise, we also do not lend credence to petitioner's contention in his third assignment of error that both the trial court and respondent Sandiganbayan erred in ruling that the guilt of petitioner has been proven beyond reasonable doubt.

The elements of the offense of malversation of public funds are as follows: (1) the offender is a public officer; (2) he has the custody or control of the funds or property by reason of the duties of his office; (3) the funds or property involved are public funds or property for which he is accountable; and (4) 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.[24] The facts of this case clearly show that foregoing elements have been satisfactorily proven, thus, we find no reason to rule otherwise.

WHEREFORE, the Petition is DENIED for lack of merit. The Decision promulgated on March 8, 2000 of the Sandiganbayan in A/R Case No. 031, affirming the decision of the Regional Trial Court, Mati, Davao Oriental, Branch 5 which found petitioner guilty beyond reasonable doubt of the crime of Malversation of Public Funds, defined in Article 217, par. 4, Revised Penal Code, and sentenced him to an indeterminate penalty ranging from twelve (12) years and one (1) day of reclusion temporal, as minimum to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum; to suffer special perpetual disqualification from public office; to pay a fine of P1,728,145.35; to indemnify the Municipal Government of Banaybanay, Davao Oriental the aforesaid amount of P1,728,145.35; and to pay the cost of the proceedings, is AFFIRMED.

The Sandiganbayan's Resolution promulgated on September 13, 2000, denying petitioner's Motion for Reconsideration; and the Resolution promulgated on October 13, 2000, denying petitioner's Motion to Suspend Proceedings in A/R Case No. 031, are likewise AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Azcuna, JJ., concur.

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[1] Penned by then Sandiganbayan Associate Justice and later Supreme Court (SC) Associate Justice Minita V. Chico-Nazario, with Sandiganbayan Associate Justice Anacleto D. Badoy, Jr. (ret.) and Sandiganbayan Associate Justice Ma. Cristina Cortez-Estrada concurring; rollo, pp. 73-84.

[2] Sandiganbayan Records, A/R Case No. 031, vol. 2, p.158.

[3] Rollo, pp. 95-96.

[4] Id., at pp. 73-77.

[5] Id., at pp. 42-56.

[6] Id., at p. 56.

[7] Supra note 1.

[8] Supra note 2.

[9] Supra note 3.

[10] Id., at p. 229.

[11] Id., at pp. 230-231.

[12] Id., at pp. 43-45.

[13] Baldebrin v. Sandiganbayan, G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 638.

[14] Rollo, p. 82.

[15] People v. De Los Reyes, G.R. No. 106874, January 21, 1994, 229 SCRA 439, 445.

[16] Section 44, Rule 130 of the Revised Rules of Evidence. Entries in official records. - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.

[17] No. L-57650, April 15, 1988, 160 SCRA 483.

[18] Id., at p. 489.

[19] Ibid.

[20] Id., at p 488.

[21] Tan v. Balon, Jr., A.C. No. 6483, August 31, 2007, 531 SCRA 645, 655.

[22] Nombrefia v. People, G.R. No. 157919, January 30, 2007, 513 SCRA 369, 376-377.

[23] People v. Dadulla, G.R. No. 175946, March 23, 2007, 519 SCRA 48, 56.

[24] Duero v. People, G.R. No. 162212, January 30, 2007, 513 SCRA 389, 401.

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