ROSULO LOPEZ MANLANGIT, PETITIONER,VS. HONORABLE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 158014. August 28, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks to reverse both the Decision[1] dated February 27, 2003 and the Resolution[2] dated April 24, 2003 of the Sandiganbayan in Criminal Case No. 26524 entitled People of the Phils. v. Rosulo Lopez Manlangit. The Sandiganbayan had convicted petitioner Rosulo L. Manlangit for violation of Article 218[3] of the Revised Penal Code, and denied his motion for reconsideration.

The antecedent facts of the case are as follows:

On October 16, 1998, petitioner, as Officer-in-Charge for Information, Education and Communication of the Pinatubo Commission, received P176,300 to fund the 6th Founding Anniversary Info-Media Activities of the Commission. A few months thereafter, he resigned without accounting for the fund.

On April 12, 2000, Artaserxes L. Sampang, then Executive Director of the Commission, filed with the Office of the Ombudsman an affidavit-complaint against petitioner for violation of Articles 217[4] and 218 of the Revised Penal Code. According to Sampang, Commission on Audit (COA) Circular No. 90-331[5] dated May 3, 1990, as amended by COA Circular No. 97-002[6] dated February 10, 1997, required petitioner to render a true and correct account of all public funds entrusted to him.

In his counter-affidavit dated July 11, 2000, petitioner averred that he had no intention to appropriate the funds for himself. He failed to submit on time the liquidation report because of the following reasons: a) a new management took over, and reorganized the Commission causing some organizational confusion; b) he resigned and had to look for another employment; and c) he had some personal and family problems. He said that he submitted his liquidation report on July 12, 2000 and settled the account.

However, according to Virginia C. Yap, the appointed Deputy Executive Director of the Commission, petitioner had not submitted any liquidation report for the P176,300. She underscored the inconsistency between the date of petitioner's counter-affidavit, July 11, 2000, and the date when he supposedly submitted his report, July 12, 2000.

On March 5, 2001,[7] the Office of the Deputy Ombudsman for Luzon filed an information against petitioner for violation of Article 218 of the Revised Penal Code. It presented as evidence the affidavit-complaint of Sampang, the counter-affidavit of petitioner, and the reply of Yap.

Meantime, in a letter dated August 12, 2001,[8] Undersecretary Mario L. Relampagos of the Department of Budget and Management Task Force Mt. Pinatubo informed Ombudsman Aniano Desierto that petitioner had already rendered an accounting and requested the withdrawal of the case.

After the Ombudsman rested its case, petitioner, with leave of court, filed a demurrer to evidence. He insisted that

there was no criminal delay on his part since there was no demand from the COA for an accounting. Further, the sanction provided in the COA circular for failure to render account was simply the withholding of wages. Moreover, petitioner averred that the case was rendered moot and academic by the letter of Undersecretary Relampagos.

On February 28, 2002, the Sandiganbayan denied the demurrer to evidence.[9] It ruled that demand was not an element of Article 218 and that the letter of Undersecretary Relampagos had no bearing on the offense of petitioner.

Petitioner moved for reconsideration but it was denied. Thereafter, petitioner presented evidence in his defense.

In the Decision dated February 27, 2003, the Sandiganbayan convicted petitioner as follows:

> Wherefore, premises considered, we find accused Rosulo Lopez Manlangit guilty of violating the provision of Article 218 of the Revised Penal Code as amended, and is hereby sentenced to suffer imprisonment of one year.
>
> SO ORDERED.[10]

Upon denial of his motion for reconsideration, petitioner now comes before us raising the following issues:

> I.
> IS PRIOR DEMAND BY THE COMMISSION ON AUDIT OR PROVINCIAL AUDITOR FOR THE PUBLIC OFFICER TO RENDER AN ACCOUNT, NOT AN ELEMENT OF THE CRIME PENALIZED UNDER ARTICLE 218 OF THE REVISED PENAL CODE?
>
> II.
> IS THE RULING IN UNITED STATES VS. SABERON (19 PHIL. 391) STILL A GOOD LAW, OR STILL APPLICABLE UP TO THE PRESENT?
>
> III.
> HAS ARTICLE 218 OF THE REVISED PENAL CODE DISPENSED WITH THE NECESSITY OF DEMAND ENUNCIATED IN THE SABERON CASE, BY "SPECIFICALLY MENTION(ING) THAT THE PUBLIC OFFICER CONCERNED MUST BE REQUIRED BY LAW OR REGULATION TO RENDER ACCOUNTS TO THE INSULAR AUDITOR (NOW COMMISSION ON AUDIT)"?
>
> IV.
> THE HONORABLE SANDIGANBAYAN HAVING "CONCEDED THAT THE APPLICABLE REGULATION IN THIS CASE IS COA CIRCULAR NO. 90-331," IS IT NOT OBVIOUS, BY A MERE READING OF THE SAID COA CIRCULAR, THAT "THE AO (ACCOUNTABLE OFFICER) SHALL LIKEWISE BE HELD CRIMINALLY LIABLE FOR FAILURE TO SETTLE HIS ACCOUNTS," "IF 30 DAYS HAVE ELAPSED AFTER THE DEMAND LETTER IS SERVED AND NO LIQUIDATION OR EXPLANATION IS RECEIVED, OR THE EXPLANATION RECEIVED IS NOT SATISFACTORY"?
>
> V.
> IT BEING AN ESTABLISHED FACT THAT NO PRIOR DEMAND, OR DEMAND LETTER HAD BEEN SERVED ON HEREIN PETITIONER, WILL HIS LIQUIDATION REPORT OF JULY 12, 2000 (EXHIBIT "1"), CERTIFIED TO AS SUBSTANTIAL COMPLIANCE, NOT RENDER THE INSTANT CASE MOOT AND ACADEMIC?[11]

In sum, we are asked to resolve whether demand is necessary for a conviction of a violation of Article 218 of the Revised Penal Code.

Citing United States v. Saberon,[12] petitioner contends that Article 218 punishes the refusal of a public employee

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to render an account of funds in his charge when duly required by a competent officer. He argues that he cannot be convicted of the crime unless the prosecution has proven that there was a demand for him to render an account. Petitioner asserts that COA Circular No. 90-331 provides that the public officer shall be criminally liable for failure to settle his accounts after demand had been made. Moreover, petitioner asserts that the case had become moot and academic since he already submitted his liquidation report.

For the People, the Office of the Special Prosecutor (OSP) counters that demand is not an element of the offense and that it is sufficient that there is a law or regulation requiring the public officer to render an account. The OSP insists that Executive Order No. 292,[13] Presidential Decree No. 1445,[14] the COA Laws and Regulations, and even the Constitution[15] mandate that public officers render an account of funds in their charge. It maintains that the instant case differs from Saberon which involved a violation of Act No. 1740[16] where prior demand was required. In this case involving a violation of Article 218, prior demand is not required. Moreover, the OSP points out that petitioner even admitted his failure to liquidate the funds within the prescribed period, hence, he should be convicted of the crime.

We shall now resolve the issue at hand.

Article 218 consists of the following elements:

- that the offender is a public officer, whether in the service or separated therefrom;

- that he must be an accountable officer for public funds or property;

- that he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and

- that he fails to do so for a period of two months after such accounts should be rendered.

Nowhere in the provision does it require that there first be a demand before an accountable officer is held liable for a violation of the crime. The law is very clear. Where none is provided, the court may not introduce exceptions or conditions, neither may it engraft into the law qualifications not contemplated.[17] Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed.[18] There is no room for interpretation, but only application.[19]

Petitioner's reliance on Saberon is misplaced. As correctly pointed out by the OSP, Saberon involved a violation of Act No. 1740 whereas the present case involves a violation of Article 218 of the Revised Penal Code. Article 218 merely provides that the public officer be required by law and regulation to render account. Statutory construction tells us that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are deemed repealed, unless the statute or code provides otherwise.[20]

Pertinent provisions of COA Circular No. 90-331 read as follows:

> 4.4 Field/Activity Current Operating Expenses (COE)
>
> 4.4.1 The special cash advance shall be used to pay the salaries and wages of the employees and the miscellaneous operating expenses of the activity...
>
> x x x x
>
> 5.1 The AO shall liquidate his cash advance as follows:
>
> x x x x
>
> 5.1.2 Petty Operating Expenses and Field Operating Expenses - within 20 days after the end of the year;

> subject to replenishment during the year.
>
> x x x x
>
> 5.8 All cash advances shall be fully liquidated at the end of each year...[21]

As shown by the foregoing provisions of COA Circular No. 90-331, petitioner was required to render an account of the fund disbursed for the Commission's Info-Media Activities within 20 days after the end of the year. In this case, he should have submitted his liquidation report not later than January 20, 1999 since the fund was issued on October 16, 1998. Article 218 penalizes the accountable officer's failure to render an account within a period of two months after such accounts should be rendered. Clearly, petitioner's submission of his liquidation report on July 12, 2000 was beyond the two- month period allowed by the provision.

Indeed the Honorable Sandiganbayan did not err in finding petitioner guilty of violating Article 218 of the Revised Penal Code. But, there is a need to modify the penalty of one year imprisonment that it imposed on petitioner.

Article 218 of the Revised Penal Code provides that the felony is punishable by "prision correccional in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both." To determine the proper penalty the Code provides:

> Art. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, ... the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:
>
> 1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
>
> x x x x
>
> Art. 65. Rule in cases in which the penalty is not composed of three periods. - In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

In the present case, there are no aggravating or mitigating circumstances proven. Hence, the penalty should be taken from the medium period of prision correccional minimum of one (1) year, one (1) month and eleven (11) days to one (1) year, eight (8) months and twenty (20) days. Under the circumstances, the application of the Indeterminate Sentence Law is called for. It provides that "the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower to prision correccional minimum is arresto mayor maximum the duration of which is four (4) months and one (1) day to six (6) months.

WHEREFORE, the petition is DENIED. The Decision dated February 27, 2003 and the Resolution dated April 24, 2003 of the Sandiganbayan in Criminal Case No. 26524 are hereby AFFIRMED, with the MODIFICATION that the accused is sentenced to an indeterminate prison term of four (4) months and one (1) day of arresto mayor as minimum to one (1) year, one (1) month and eleven (11) days of prision correccional as maximum.

SO ORDERED.

Carpio, Carpio-morales, Tinga, and Velasco, Jr. JJ., concur.

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[1] Rollo, pp. 53-62. Penned by Associate Justice Rodolfo G. Palattao with Associate Justices Gregory S.

Ong and Ma. Cristina G. Cortez-Estrada concurring.

[2] Id. at 64-65.

[3] ART. 218. Failure of accountable officer to render accounts. - Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall be punished by prision correccional in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both.

[4] 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 two hundred pesos.

- The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

- The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

- The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand 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 he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.

[5] Rollo, pp. 81-89.

[6] Restatement with Amendments of the Rules and Regulations on the Granting, Utilization and Liquidation of Cash Advances Provided for Under COA Circular No. 90-331 dated May 3, 1990.

[7] Sandiganbayan rollo, Vol. I, pp. 1-2.

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

[9] Rollo, pp. 125-130.

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[10] Id. at 61-62.

[11] Id. at 33-34.

[12] 19 Phil. 391 (1911).

[13] Administrative Code of 1987.

[14] Government Auditing Code of the Philippines.

[15] ARTICLE XI
ACCOUNTABILITY OF PUBLIC OFFICERS
Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

x x x x

[16] An Act providing for the punishment of public officers and employees who fail or refuse to account for public funds or property or who make personal use of such funds or property, or any part thereof, or who misappropriate the same, or any part thereof, or who are guilty of any malversation with reference to such funds or property, or who through abandonment, fault, or negligence permit any other person to abstract, misappropriate, or make personal use of the same. Enacted on October 3, 1907.

[17] Ramos v. Court of Appeals, No. L-53766, October 30, 1981, 108 SCRA 728, 733; see University of the Phil. Board of Regents v. Auditor General, No. L-19617, October 31, 1969, 30 SCRA 5, 17.

[18] Abello v. Commissioner of Internal Revenue, G.R. No. 120721, February 23, 2005, 452 SCRA 162, 169.

[19] Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005, 462 SCRA 197, 220.

[20] People v. Binuya, 61 Phil. 208 (1935).

[21] Rollo, pp. 83-85.

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