

**CELSO M. MANUEL, EVANGELISTA A. MERU, FLORANTE A. MIANO,
AND PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. HON.
SANDIGANBAYAN (FOURTH DIVISION), MELCHOR M. MALLARE AND
ELIZABETH G...**

G.R. No. 158413. February 08, 2012

Ponente: MENDOZA, J.

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MENDOZA, J.:

These consolidated petitions question an interlocutory order of the Sandiganbayan as well as its decision and resolution in Criminal Case No. 25673 for malversation of public funds, entitled *People of the Philippines v. Melchor M. Mallare and Elizabeth M. Gosudan*.

In the earlier petition, G.R. No. 158413, the petitioners, Celso M. Manuel, Evangelista A. Meru and Florante A. Miano (petitioners), question the May 20, 2002 Resolution[1] of the Sandiganbayan granting the Motion to Re-open Proceedings filed by the accused after their conviction in the September 17, 2001 Decision[2] of the said tribunal.

In G.R. No. 161133, the petitioners are the accused assailing the (1) September 17, 2001 Decision of the Sandiganbayan finding them guilty beyond reasonable doubt of the crime charged; (2) the July 21, 2003 Resolution[3] affirming the conviction after reception of additional evidence in the re-opened proceedings; and (3) the November 13, 2003 Resolution[4] denying their motion for reconsideration.

The Consolidated Facts on Record

On October 4, 1999, an Information[5] was filed before the Sandiganbayan charging Melchor M. Mallare (Mallare) and Elizabeth M. Gosudan (Gosudan), Mayor and Treasurer, respectively, of the Municipality of Infanta, Pangasinan with the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code. The Information reads:

That on or about 17 August 1998, and for sometime prior thereto, in the Municipality of Infanta, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Melchor M. Mallare, being the Mayor of the said Municipality and a high ranking official, and Elizabeth M. Gosudan, being the Treasurer of the said Municipality and an accountable officer of public funds of said municipality by reason of the duties of her office, while in the performance and taking advantage of their official and administrative functions, conspiring and confederating with or mutually helping each other, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously appropriate, take or misappropriate, or permit any other person to take wholly or partially, public funds in the custody of the accused Municipal Treasurer Gosudan amounting to PESOS: ONE MILLION FOUR HUNDRED EIGHTY SEVEN THOUSAND ONE HUNDRED SEVEN AND 40/100 (P1,487,107.40), when said accused disbursed, or authorized, allowed, consented or tolerated the disbursement, of public funds in the amounts of: (1) P995,686.09 for unlawful personal loans to several municipal officials and employees including themselves;

(2) P291,421.31 for payments without the requisite appropriation; and (3) P200,000 for withdrawals recorded as cash disbursement, said disbursement being in violation of the Constitution, law, rules and regulation, to the damage and prejudice of the Government and public interest.

CONTRARY TO LAW.

The Information ascribed to Mallare and Gosudan (accused) the following acts of alleged unlawful disbursement, constituting the elements of the crime of Malversation of Public Funds, to wit: 1) P995,686.09 for unlawful personal loans to several municipal officials and employees including themselves; 2) P291,421.31 for payments without the requisite appropriation; and 3) P200,000.00 for withdrawals recorded as cash disbursements.

Upon being arraigned on January 4, 2000, the accused pleaded "Not Guilty." During the pre-trial, the parties stipulated and agreed: 1) that the accused were public officers; 2) that there was an audit report; 3) that there was restitution in the amount of P110,000.00; 4) that there was a written demand on the accused to pay the shortage; and 5) that the shortage was in the amount of P1,487,107.40.

The issues posed before the Sandiganbayan were the following:

(1) Whether or not accused Municipal Treasurer Elizabeth M. Gosudan committed the crime of Malversation of Public Funds when she granted personal loans to the municipal officials and employees, including herself and her co-accused Municipal Mayor Melchor M. Mallare, from the municipal funds, despite the fact that the full amount of said loan had been completely reimbursed or restituted at the exit conference.

(2) Whether or not accused Municipal Mayor Melchor M. Mallare has conspired with his co-accused Municipal Treasurer Gosudan in the commission of the crime of Malversation of Public Funds.

During the trial, the prosecution presented several documents and the lone testimony of Emelie S. Ritua, State Auditor II of the Commission on Audit (COA). The defense, on the other hand, presented their own documents and Gosudan as its only witness.

On September 17, 2001, the Sandiganbayan rendered a decision finding Mallare and Gosudan guilty beyond reasonable doubt of the crime of Malversation of Public Funds. The dispositive portion of the decision reads:

WHEREFORE, the herein two (2) accused, MELCHOR M. MALLARE and ELIZABETH M. GOSUDAN, are hereby found GUILTY beyond reasonable doubt of the crime of MALVERSION OF PUBLIC FUNDS, defined and penalized under the first paragraph, subparagraph 4, Article 217, Revised Penal Code, and each of them is sentenced under the Indeterminate Sentence Law to suffer the penalty of imprisonment of from Thirteen (13) Years and Four (4) Months, as minimum, to Nineteen (19) Years and Four (4) Months, as maximum, both of reclusion temporal, and also to suffer the penalty of perpetual special disqualification. Further, accused Melchor M. Mallare is hereby sentenced to pay a fine of P300,998.59, accused Elizabeth M. Gosudan to pay a fine of P774,285.78, and both to pay the costs.

SO ORDERED.[6]

In reaching said determination, the Sandiganbayan gave the following reasons:

Going now to the essential elements of the crime of Malversation of Public Funds, the following facts must concur:

- (1) That the accused is a public officer;
- (2) That he/she had custody and/or control of funds by reason of his/her office;
- (3) That the funds involved were public funds for which he/she is accountable; and

(4) That he/she appropriated or consented, or through abandonment or through negligence, permitted another person to take said public funds.

On the first element, as borne by the record of this case, and as specifically stipulated by the parties per the Pre-Trial Order, dated 7 February 2000, the accused Melchor M. Mallare and Elizabeth M. Gosudan are public officers at the time of the commission of the alleged offense, the former being the Municipal Mayor and the latter the Municipal Treasurer of Infanta, Pangasinan. On the second and third elements, as Municipal Treasurer, accused Gosudan had the duty to have custody and the obligation to exercise proper management of the municipal funds of Infanta, Pangasinan, and accused, Mallare, as the local chief executive, is responsible for the supervision of all government funds and property pertaining to his agency, the Municipality of Infanta, Pangasinan.

Anent the fourth element, the record is replete with evidence showing that accused Treasurer Gosudan herself admitted that she gave the “missing” amount to several municipal officials and employees, as witness the following facts:

1. Per the testimony of COA Auditor Emelie S. Ritua on the witness stand, when she and her audit team told the Treasurer “to produce immediately the missing funds and to explain why the shortage have [had] occurred x x x [s]he told [them] that she [could]not produce immediately a part of the shortage because they were loaned out to some of the officials and employees;” and that [s]he presented to them an informal list of the officials and employees who were granted IOUs or “vales” or “pautang.”
2. The fact of the accused Treasurer having given the subject amounts to the municipal officials and employees named in the “unofficial list” is not denied by her, as the lone witness for the prosecution, she and her counsel merely insisting that the amounts were not given as loans but as “vales” or “pautang.”
3. The confirmation letters prepared by COA Auditor Ritua wherein the persons named in the accused Treasurer’s “informal list” of borrowers acknowledged by their signatures at the bottom thereof that they have “outstanding loan balance from her,” further prove beyond reasonable doubt that said accused Treasurer loaned out to said persons amounts from the municipal funds.
4. The insistence of accused Treasurer Gosudan that the subject amounts that she gave to the aforementioned persons, including herself and the accused Mayor, were not “loans” but were “vales” “pautang,” “salary advances” “cash advances,” “travel expenses,” “gasoline expenses” and/or “funds used for purchase of spare parts of municipal vehicle” – is belied by her own admission that the amounts of these “vales” were not covered by the required vouchers (with supporting papers) signed by accused Municipal Mayor Mallare and were not entered in the cash book because they were “not an official cash advance,” and she could no longer remember what particular amount is for which specific purpose.
5. The foregoing naked claims and admissions of accused Treasurer Gosudan lead Us to the inevitable conclusion that the amounts she gave to the municipal officials and employees, including herself and her co-accused Mayor Mallare, were nothing but personal loans taken from the cash account of the Municipality of Infanta, Pangasinan.
6. As already stated earlier, the full amount of the “shortages” found by the COA audit team (which constitute the subject personal loans, as already determined) was fully restituted (according to COA Auditor Ritua) or reimbursed (according to accused Gosudan), as shown in Official Receipts all issued in the name of accused Gosudan.[7]

The Sandiganbayan further stated that Gosudan’s acts of allowing other persons to borrow municipal funds constituted solid proof of malversation. In the case of Mallare, his act of getting or accepting the subject loan for himself in the amount of ₱300,998.59 from Gosudan amounted to a conspiracy with the latter in the commission of the crime of malversation. The full restitution of the total amount of the loaned public funds did not exonerate

Mallare and Gosudan because the crime of Malversation of Public Funds was already consummated upon the latter's granting of the loans, and upon the former's acceptance and taking of the amounts lent to him. Restitution of the loaned amounts could only mitigate their civil liabilities, not exonerate them from criminal liability. The pertinent portions of the Sandiganbayan Decision read as follows:

The foregoing discussion leads us to the inevitable conclusion that accused Municipal Treasurer Gosudan committed the crime of Malversation of Public Funds when she extended loans or cash advances to herself and several of her co-employees including her co-accused Mayor Mallare, in the total amount of ₱774,285.78.

On the part of accused Municipal Mayor Melchor M. Mallare, it is true that not an iota of evidence was introduced to show that he conspired with accused Treasurer Gosudan in giving loans to all the municipal officials and employees named in the confirmation letters, other than that to himself. Hence, he cannot be faulted for the grant of said loans by his co-accused municipal treasurer. However, his act of getting or accepting the loan for himself in the amount of ₱300,998.59 from accused Treasurer Gosudan, as acknowledged by him in the confirmation letter that he signed, is a concrete proof of his having conspired with her in the commission of the crime of Malversation of Public Funds in the said amount.

The full restitution of the total amount of the loaned public funds does not exonerate the herein two accused, because the crime of Malversation of Public Funds was consummated upon accused Treasurer Gosudan's granting of the loans, and upon accused Mayor Mallare's acceptance and taking of the amount thus loaned to him. The restitution of the loaned amounts thereafter will not exonerate said accused, and can merely mitigate their civil liabilities which, however, they have fully settled when the whole amount of the loan was restituted.[8]

Insisting on their innocence, Mallare and Gosudan filed a motion for reconsideration[9] but it was denied in a resolution[10] dated November 16, 2001.

On January 9, 2002, Mallare and Gosudan filed their Motion To Re-Open Proceedings[11] arguing that their counsel committed a misjudgment by not presenting Mallare at the witness stand. Such circumstance justified re-opening of proceedings to avoid a miscarriage of justice. The Ombudsman Prosecutor filed his Comment/Opposition[12] contending that the subject motion to re-open proceedings was without merit because it was filed late and after the decision convicting the accused had already attained finality.

On May 20, 2002, the Sandiganbayan issued its Resolution[13] granting the Motion To Re-open Proceedings and allowing the reception of Mallare's testimony. The grant of the subject motion was based 1) on Section 24, Rule 119 of the Revised Rules of Court on Criminal Procedure; and 2) in the interest of justice. The Sandiganbayan wrote :

Section 24, Rule 119 of the Revised Rules of Court on Criminal Procedure, provides that:

Section 24. Reopening. – At any time before finality of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it.

While it may be true, as ably argued by the prosecution, that an accused has only one day after receipt of the resolution denying the motion for reconsideration, to file an appeal, after which the decision attains finality, the same rule does not apply to cases falling within the jurisdiction of the Sandiganbayan.

Under Rule 45, Section 2 of the Revised Rules of Procedure, a party desiring to appeal by certiorari from a judgment or a final order or resolution of the Sandiganbayan may file within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for reconsideration filed in due time after notice of the judgment.

Otherwise put, if a motion for reconsideration is filed, the 15-day reglementary period within which to appeal the decision of the Sandiganbayan is reckoned from the date the party who intends to appeal received the order denying the motion for reconsideration.

In the case at bar, since the motion for reconsideration was filed on October 2, 2001 of the decision promulgated on September 17, 2001, and the motion for reconsideration's denial dated November 13, 2001 was only received on December 5, 2001, the instant Motion to Reopen the Proceedings which was filed on December 20, 2001, may still be entertained, since the period of fifteen (15) days begun to run all over again from notice of the denial of the resolution. Hence, the decision convicting the accused has not yet attained finality.

Secondly, and more importantly, accused-movants' plights would certainly result in a miscarriage of justice if the same were not harmonized with justice and the facts. No less than their liberty is at stake here. They face a jail term of thirteen (13) years and four (4) months to nineteen (19) years and four (4) months. And, if they have to spend this long stretch in prison, their guilt must be established beyond reasonable doubt. They cannot lose their liberty because their former lawyer pursued a carelessly contrived strategy of not presenting herein-accused-movant Mallare to testify, which thus forbade him to air his side. Under the circumstances, higher interests of justice and equity demand that herein accused be not penalized for the costly importuning of their previous lawyer, since their only fault was to repose their faith and entrust their innocence to him. Losing liberty, therefore, on default or miscalculation of a lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer.

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Most assuredly, therefore, the better part of discretion is to admit and appreciate herein accused-movant Mallare's testimony. Without prejudging, however, the result of such appreciation, accused-movant Mallare's testimony prima facie appears strong when considered with the fact, that the amount of ₱300,998.59 which he admitted (as shown by his "CONFORME" in Exh. "K") as his outstanding loan balance, was supposedly used for a public purpose, and such fact was actually testified to by his co-accused Elizabeth Gosudan. It was his understanding then, when he signed the pro-forma confirmation letter, that he was merely informing the COA Auditors the amount of his cash advance as basis later for liquidation or settlement, and not an admission of a personal loan.

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Hence, if only to truly make the courts really genuine instruments in the administration of justice, We believe, in order to assure against any possible miscarriage of justice resulting from accused-movant Mallare's failure to present his side of the story, through no fault of his, that this case be reopened for reception of evidence and appreciation of his testimony.[14]

With the Sandiganbayan's May 20, 2002 Resolution granting the re-opening of the proceedings, Mallare completed his testimony and the defense rested its case on September 11, 2002.

On June 10, 2003, Celso M. Manuel, Evangelista A. Meru and Florante A. Miano (petitioners) filed a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order dated May 30, 2003, docketed as G.R. No. 158413, particularly assailing the Sandiganbayan's Order granting the re-opening of the subject criminal case.

Thereafter, on July 21, 2003, the Sandiganbayan issued a resolution,[15] affirming its September 17, 2001 Decision which convicted Mallare and Gosudan of the crime of Malversation of Public Funds beyond reasonable doubt after its reception of additional evidence during the re-opened proceedings. The dispositive portion of the resolution reads:

WHEREFORE, the Court finds no cogent reason to disturb or amend the Court's Decision promulgated on September 17, 2001.

SO ORDERED.[16]

The Sandiganbayan ruled, among others, that Mallare's testimony at the re-opened proceedings was just an afterthought and could not be given greater weight as to reverse his conviction.

On November 13, 2003, the Sandiganbayan issued a resolution[17] denying Mallare's motion for reconsideration.

On December 17, 2003, the Office of the Solicitor General (OSG) filed its Comment[18] praying that the petition in G.R. No. 158413 be given due course.

On January 16, 2004, Mallare and Gosudan filed a petition for review docketed as G.R. No. 16133 where one of the grounds raised was the Sandiganbayan's alleged misunderstanding of the nature of a motion for the reopening of the proceedings, and its eventual granting of said motion.

On March 16, 2004, petitioners in G.R. No. 158413 filed an urgent motion to consolidate their case with G.R. No. 161133.

On April 15, 2009, this Court issued a Resolution[19] directing the consolidation of G.R. No. 158413 with G.R. No. 161133.

The petition in G.R. No. 158413 raises the following issues:

1) WHETHER OR NOT THE MOTION TO REOPEN THE PROCEEDINGS WAS PROPER?2) WHETHER OR NOT THE MOTION TO REOPEN THE PROCEEDINGS TOLLED THE RUNNING OF THE PERIOD TO APPEAL?3) WHETHER OR NOT THE RESPONDENT COURT HAD JURISDICTION OVER THE CASE WHEN IT GRANTED PRIVATE RESPONDENTS' MOTION TO REOPEN THE PROCEEDINGS?4) WHETHER OR NOT RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION FOR GRANTING THE MOTION TO REOPEN THE PROCEEDINGS?[20]

On the other hand, the petition in G.R. No. 161133 raises the following grounds:

I
UPON THE RECORD, SUBSTANTIAL AND CREDIBLE EVIDENCE EXISTS, WHICH APPEARS TO HAVE BEEN OVERLOOKED OR DISREGARDED, RAISING A REASONABLE DOUBT OF THE GUILT OF THE PETITIONERS AT THE VERY LEAST, AND JUSTIFYING, UNDER WELL-ESTABLISHED RULE, THE EXERCISE OF THE POWER OF THE SUPREME COURT TO REVIEW THE FINDINGS OF FACT OF THE SANDIGANBAYAN.II
THE APPEALED DECISION AND RESOLUTIONS OF THE SANDIGANBAYAN ARE BASED ON A MISAPPREHENSION OF THE EVIDENCE – PARTICULARLY EXHIBIT “K” – THUS LEADING TO ITS ERRONEOUS CONCLUSIONS AND MISTAKEN INFERENCES.III
THE SANDIGANBAYAN MISUNDERSTOOD THE NATURE OF A MOTION FOR THE REOPENING OF PROCEEDINGS, WHICH IT IRONICALLY GRANTED, AND DID NOT PROPERLY CONSIDER THE ADDITIONAL EXCULPATORY EVIDENCE PRESENTED BY MALLARE, AND MISAPPLIED A SUPREME COURT DECISION IN DISMISSING THE ADDITIONAL EVIDENCE.[21]

G.R. No. 158413

Petitioner's argument

In G.R. No. 158413, petitioners argue that the motion to re-open proceedings was improper because the earlier

filing of a motion for reconsideration by the accused precluded them from filing a subsequent motion to re-open proceedings. Petitioners contend that the motion to re-open proceedings was in reality a second motion for reconsideration prohibited by the rules. The ground invoked by the accused in the motion, like the failure of Mallare to take the witness stand, should have been raised prior to or simultaneous with the filing of the motion for reconsideration because that ground had been in existence at the time of the filing of the motion for reconsideration.

Moreover, petitioners in this case insist that the motion to re-open the proceedings did not toll the running of the period to appeal. They claim that the accused received a copy of the order denying their motion for reconsideration on December 5, 2001. The accused, however, failed to appeal to this Court in accordance with Rule 45 of the New Rules of Court after the denial of their motion for reconsideration. Instead, the accused filed a motion to re-open proceedings which was not allowed by the rules. Considering that the filing of the motion to re-open did not toll the running of the period to file a petition for review, the judgment of conviction became final as of December 21, 2001. Petitioners likewise stress that the motion to re-open proceedings was not a petition for review contemplated under Rule 45 of the New Rules of Court that could be filed within fifteen (15) days from receipt of the order denying the motion for reconsideration. Hence, the Sandiganbayan should not have accepted, entertained or acted on the motion to re-open the proceedings filed after December 6, 2001.

G.R. No. 161133

Petitioners' argument

Petitioners Mallare and Gosudan argue that the Sandiganbayan's decision convicting them of the crime of Malversation of Public Funds was based on a misapprehension of the evidence because it did not particularly appreciate the nature and purpose of the "reimbursement expense receipt" (RER) which required the signatures of the officials and employees before Gosudan could give a cash advance. What was extended by Gosudan to certain officials and employees were not loans but reimbursement expenses such as cash advances for traveling expenses, purchase of spare parts and salary advances.

The accused lament that the Sandiganbayan ignored and misappreciated the testimony of Mallare given after the re-opening of the proceedings. It was their contention that Mallare did not conspire with Gosudan, and that the money he received from Gosudan was not used for a personal, but for a public, purpose. Mallare claims that he did not get or accept a loan for himself and that he gave good and valid reasons to justify how the amount of P300,998.00 was spent, none of which was for his personal use.

The accused further argue that there was full restitution made within a reasonable time, which the COA auditors acknowledged.

People's argument

The prosecution claims that the Sandiganbayan's decision and resolutions took into consideration all the evidence on record, testimonial and documentary, presented by the prosecution and the defense during the hearings of the case. It likewise argues that all the elements of the crime of Malversation of Public Funds were present in this case considering that 1) Mallare and Gosudan were public officers being the Mayor and Municipal Treasurer, respectively, of Infanta, Pangasinan; 2) Gosudan, as Municipal Treasurer, had custody of public funds thereby making her accountable for these funds; 3) Gosudan granted loans to herself and her co-employees; and 4) Mallare signed the confirmation letter stating that he had outstanding loans received from Gosudan.

The Court's Verdict

Considering that the Sandiganbayan had issued its July 21, 2003 Resolution affirming its September 17, 2001 decision, which convicted Mallare and Gosudan of the crime of Malversation of Public Funds beyond reasonable doubt, the Court need not pass upon the technical issues in G.R. No. 158413.

The only standing issue now is whether or not the Sandiganbayan was correct in finding Mallare and Gosudan guilty beyond reasonable doubt of the crime of Malversation of Public Funds.

The Court has carefully reviewed the records and found no reason to disturb the Sandiganbayan's decision of conviction against Mallare and Gosudan for the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, as amended, as follows:

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:

1. 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.
2. 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.
3. 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.
4. 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 fund 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 uses.

To sustain a criminal conviction for the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code, as amended, all the following elements must be present:

1. That the offender is a public officer;
2. That he had custody or control of funds or property by reason of the duties of his office;
3. That those funds or property were public funds or property for which he was accountable; and
4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

Mallare and Gosudan were
accountable for public funds
or property

The accountability for public funds or property of municipal mayors and treasurers was well-discussed in the case of *People of the Philippines v. Teofilo G. Pantaleon, Jr.*,^[22] as follows:

The funds for which malversation the appellants stand charged were sourced from the development fund of the municipality. They were funds belonging to the municipality, for use by the municipality, and were under the collective custody of the municipality's officials who had to act together to disburse the funds for their intended municipal use. The funds were therefore public funds for which the appellants as mayor and municipal treasurer were accountable.

Vallejos, as municipal treasurer, was an accountable officer pursuant to Section 101(1) of P.D. No. 1445 which defines an accountable officer to be "every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law." Among the duties of Vallejos as treasurer under Section 470(d)(2) of Republic Act No. 7160 is "to take custody and exercise proper management of the funds of the local government unit concerned."

Pantaleon, as municipal mayor, was also accountable for the public funds by virtue of Section 340 of the Local Government Code, which reads:

Section 340. Persons Accountable for Local Government Funds. — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this title. Other local officials, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

In addition, municipal mayors, pursuant to the Local Government Code, are chief executives of their respective municipalities. Under Section 102 of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the municipality:

Section 102. Primary and secondary responsibility. – (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

Unquestionably, the source of the subject funds taken by Mallare and Gosudan came from the municipal funds. As Municipal Mayor and Treasurer, respectively, they had the sworn duty to safely keep said funds and disburse the same in accordance with standard procedure because the subject funds belong to the municipality and must only be used for the benefit of the municipality. The standard practice in the disbursement of public funds is that they cannot be released and disbursed without the signatures of the Mayor and the Treasurer. In this case, the written approvals of Mallare and Gosudan were essential before any release and disbursement of municipal funds could be made. This was quite clear in Pantaleon where it was further written:

As a required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. The appellants, therefore, in their capacities as mayor and treasurer, had control and responsibility over the funds of the Municipality of Castillejos.

Hence, any unlawful disbursement or misappropriation of the subject funds would make them accountable.

Mallare and Gosudan appropriated, took,
misappropriated or consented or, through
abandonment or negligence, permitted another
person to take them

The Court agrees with the Sandiganbayan's ruling that there was more than enough evidence to prove that Gosudan abused her position as Municipal Treasurer of Infanta, Pangasinan, by committing the crime of

Malversation of Public Funds when she gave out loans in the total amount of ₱774,285.78 to several co-employees including herself. Gosudan does not deny the fact that she extended thirteen (13) loans to the following borrowers including herself:[23]

Name

Position

Amount

Exhibit

1.

Onofre M. Mayo

Municipal Assessor

P55,000.00

“D”

2.

Daisy M. Ofalza

Social Development Officer

53,842.00

“E”

3.

Marivic M. Fortes

Clerk II

50,000.00

“F”

4.

Elena M. Mores

S.B. Secretary

46,420.19

“G”

5.

Manolito P. Monta

Budget Officer

2,500.00

“H”

6.

Luzviminda Maniago

Municipal Accountant

17,200.00

“I”

7.

Elizabeth M. Gosudan

Municipal Treasurer

75,000.00

“J”

8.

Melchor M. Mallare

Municipal Mayor

300,998.59

“K”

9.

Marle M. Mas

S.B. Member

115,625.00

“L”

10.

Faustina Pagarigan

Agricultural Technologist

500.00

“M”

11.

Pedro M. Mallare

Private Secretary

2,500.00

“N”

12.

Anacleto Montero

ABC President

50,000.00

“O”

13.

Manuel Domalanta

Chief of Police

5,200.00

“P”

When COA Auditor Emilie S. Ritua (Ritua) requested Gosudan to immediately produce the missing funds and to explain why there was a shortage in the accounting of municipal funds, she failed to immediately do so. The best that she could do was to explain that the subject amount was lent to the said municipal officials and employees.[24] Gosudan presented an informal list of the borrowers who were granted “vales” or “pautang” and, who, in turn, gave IOUs.[25]

The confirmation letters prepared by the audit team of Ritua showed the written acknowledgment of the said borrowers that they had outstanding loan balances from Gosudan.[26] Gosudan also admitted that these loans were neither covered by supporting vouchers signed by the Municipal Mayor nor officially entered in the cash book as official cash advances. Worse, she could no longer remember the particular amount loaned and the specific purpose therefor.[27]

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 in malversation cases.[28]

Clearly, the subject loans that Gosudan extended to the said municipal officials and employees including herself were unofficial and unauthorized loans and, therefore, anomalous in nature. The Sandiganbayan was correct in ruling that said loans were nothing but personal loans taken from the cash account of the Municipality of Infanta, Pangasinan. Gosudan unlawfully disbursed funds from the coffers of the municipality and, therefore, guilty of the crime of Malversation of Public Funds.

Like Gosudan, Mallare is also guilty of the same crime for accepting or getting for himself the loan amount of ₱300,998.59 from Gosudan as evidenced by his written acknowledgment in the COA Audit Team’s confirmation letter. His acceptance of the subject loan amount of ₱300,998.59 without any supporting official voucher is proof that there was a conspiracy in the illegal disbursement of the subject loan amounts.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.

In this case, petitioners Zacaria A. Candao and Abas A. Candao were co-signatories in the subject checks issued without the required disbursement vouchers. Their signatures in the checks, as authorized officials for the purpose, made possible the illegal withdrawals and embezzlement of public funds in the staggering aggregate amount of P21,045,570.64.[29]

This Court takes note of the following findings made by the Sandiganbayan regarding the supposed disbursement vouchers presented by Mallare when he testified at the re-opening proceedings. Thus:

Finally, the Court's resolution to uphold and sustain the September 17, 2001 conviction of the two accused was buttressed by a closer scrutiny of documentary evidence presented during the trial when the case was re-opened, more particularly, Exhibits "2-Mallare" and "3-Mallare," which were the supposed disbursement vouchers for the public funds received by the accused Mayor Mallare from the Municipality of Infanta, Pangasinan.

The Court noticed the irregularities of the two disbursement vouchers. Said vouchers appear to have been spurious, fabricated and/or falsified, and therefore, the Court did not give any probative value to these documentary exhibits. The following are the reasons:

- a) The disbursement vouchers did not have the required control number in the space provided for it;
- b) The two disbursement vouchers were totally prepared, approved, and signed by accused Mayor Mallare alone;
- c) The Government Accounting and Auditing Manual requires:

Sec. 168. Basic Requirements applicable to classes of disbursements. – The following basic requirements shall be complied with:

CERTIFICATE OF AVAILABILITY OF FUND – Existence of lawful appropriation, the unexpended balance which, free from other obligations, is sufficient to cover the expenditure, certified as available by an accounting officer or any other official required to accomplish the certificate.

The accounting entries in the two vouchers were totally missing. Expectedly, the certification for the availability of funds in the disbursement voucher was not signed by the accountant.

d) It did not conform with the regulations on disbursement of expenses that were enumerated at the back portion of the disbursement voucher form, which, among others, required the following:

- i) The voucher number shall be indicated on the face of the voucher and on every supporting documents;
- ii) Attach original supporting documents, bill, invoices, purchase orders, etc., to the voucher;
- iii) Paid vouchers including its supporting documents, shall be perforated and conspicuously stamped PAID;
- iv) The "RECEIVED FROM" portion shall be accomplished only after the three signatories in the voucher are secured and only upon actual receipt of payment.

e) There were no supporting documents to establish validity of claim. The submission of documents and other evidence was required to establish the validity and correctness of the claim for payment.

Therefore, despite the additional evidence presented by accused Mayor Mallare, said accused failed to overcome the overwhelming evidence proffered by the prosecution which established the guilt of the accused beyond reasonable doubt.[30]

Finally, the Court is in accord with the Sandiganbayan's ruling that the full restitution of the lent public funds cannot exonerate Mallare and Gosudan from the crime charged because payment does not extinguish criminal

liability.

It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime. At most, then, payment of the amount malversed will only serve as a mitigating circumstance akin to voluntary surrender, as provided for in paragraph 7 of Article 13 in relation to paragraph 10 of the same Article of the Revised Penal Code.[31]

WHEREFORE, the petition is DENIED. The September 17, 2001 decision of the Sandiganbayan in Criminal Case No. 25673 for Malversation of Public Funds is AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perlas-Bernabe, JJ., concur.

[1] Rollo (G.R. No. 158413), pp. 129-136.

[2] Id. at 98 and (G.R. No. 161133), pp. 40-69. Penned by Associate Justice Nicodemo T. Ferrer and concurred in by Associate Justice Narciso S. Nario and Associate Justice Rodolfo G. Palattao.

[3] Id. (G.R. No. 161133), at 80.

[4] Id. at 81-101.

[5] Id. (G.R. No. 158413), at 51-52.

[6] Id. (G.R. No. 158413), at 98.

[7] Id. at 86-89.

[8] Id. at 96-97.

[9] Id. at 101-106.

[10] Id. at 114-118.

[11] Id. at 119-122.

[12] Id. at 123-128.

[13] Id. at 129-136.

[14] Id. at 132-136.

[15] Id. (G.R. No. 161133), at 78-80.

[16] Id. at 80.

[17] Id. at 81-101.

[18] Id. (G.R. No. 158413), at 202-213.

[19] Id. at 475.

[20] Id. at 14.

[21] Id. (G.R. No. 161133), at 17-18.

[22] G.R. Nos. 158694-96, March 13, 2009, 581 SCRA 140, 161.

[23] Rollo (G.R. No. 158413), p. 83.

[24] Id. at 87.

[25] Id. at 87-88.

[26] Id. at 88.

[27] Id. at 88-89.

[28] Zacaria A. Candao v. People, G.R. Nos.186659-710, October 19, 2011.

[29] Id.

[30] Rollo, (G.R. No. 161133), pp. 95-96.

[31] Zenon R. Perez v. People, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 566-567.

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