

**GABRIEL L. DUERO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES  
AND THE HON. SANDIGANBAYAN (FIRST DIVISION), RESPONDENTS.***G.R. NO. 162212. January 30, 2007*

Ponente: QUISUMBING, J.

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From the Sandiganbayan Resolution[1] dated February 17, 2004, denying the Motion for Reconsideration of the Sandiganbayan Decision[2] dated June 6, 2003 in Criminal Case No. 11999, petitioner Gabriel L. Duero filed the instant appeal. The Sandiganbayan had found petitioner guilty of Malversation of Public Funds, and sentenced him (a) to an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional as minimum to ten (10) years and one (1) day of prision mayor as maximum, (b) to pay a fine of P46,602.54, and (c) to suffer special perpetual disqualification from holding public office.[3]

The facts as culled from the records are as follows:

On March 9, 1981, the Commission on Audit (COA) Regional Director for Region XI ordered the examination of the cash and accounts of the Municipal Treasurer and all other accountable officers of, among others, Tandag, Surigao del Sur.[4] On March 16, 1981, the Special Audit Team No. 1[5] went to petitioner's office, as then Municipal Treasurer of Tandag, to conduct an audit of his cash and accounts from June 3, 1980 to March 16, 1981. The audit team made the examination from March 16 to May 26, 1981. They stayed in petitioner's office for one week but completed the review of the documents in their regional office in Davao City. They returned to Tandag from time to time during the said period.

As testified to by witnesses, Alberto J. Sta. Cruz and Fe B. Iletto, initially, petitioner's cash and accounts as appearing in his Books of Account yielded an overage of P1,648.02.[6] Upon verification, however, it appeared that certain infrastructure funds from the Ministry of Public Works and Highways (MPH)[7] and interest earned on the municipality's time deposit with the Philippine National Bank (PNB) were not entered by petitioner in his Books of Account. As a result, the audit team amended petitioner's cash accountability and declared these items as missing funds.

On May 4, 1981, Sta. Cruz sent a written demand to petitioner to produce P339,375.34 and to "take up [sic] same into account."[8] Upon verification with the PNB though, the audit team found that the P277,882.01 consisted of simulated deposits and withdrawals that cancelled each other out.[9] Hence, Sta. Cruz sent another written demand to petitioner on May 26, 1981, for the reduced amount of P70,993.33.[10]

On even date, the audit team submitted to the Regional Director the Reports of Examination of the Cash and Accounts of petitioner. Sta. Cruz submitted also a Narrative Report.[11] In both documents, however, the petitioner's accountability was further reduced to P63,993.33 after the audit team discovered that it was the Provincial Treasurer who received the P7,000 as infrastructure fund. Sta. Cruz informed the Regional Director that the report was not submitted earlier because the audit team had to verify and re-verify the figures since it involved collections that were not recorded in the Books of Account. Based on the audit team's findings, Sta.

Cruz recommended, among others, petitioner's criminal prosecution for malversation of public funds.

On November 18, 1986, the Tanodbayan Special Prosecutor filed with the Sandiganbayan an Information<sup>[12]</sup> charging petitioner Gabriel L. Duero with Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, committed as follows:

That on or [about] the period comprising the year 1980 to 1981, in the municipality of Tandag, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the aforesaid accused being then the Municipal Treasurer of the said municipality, and as such accountable for funds received and collected by him by reason of his office, did then and there, with intent to defraud the government, wilfully, unlawfully and feloniously, with grave abuse of confidence and by taking advantage of his official position, take and appropriate for his own personal use and benefit the amount of Forty Four Thousand Three Hundred Twenty Four Pesos and Five Centavos (P44,324.05), to the damage and prejudice of the government.

Contrary to law.<sup>[13]</sup>

Upon arraignment on June 17, 1988, the petitioner entered a plea of not guilty.<sup>[14]</sup>

While the case was pending with the Tanodbayan, petitioner filed an Urgent Motion for Reinvestigation/Reconsideration on December 10, 1986.<sup>[15]</sup> On December 16, 1986, the Tanodbayan granted the motion.<sup>[16]</sup> As a result, the COA regional office required Sta. Cruz to comment on the petitioner's request. On April 13, 1987, Sta. Cruz submitted his 1<sup>st</sup> Indorsement<sup>[17]</sup> where petitioner's accountability was further reduced to P46,602.54, after deducting the amounts of P9,890.79 and P7,500, as additional interest earned from the time deposit and purchase of a motor vehicle, respectively.

In his testimony, witness Sta. Cruz revealed that he included certain items<sup>[18]</sup> amounting to P2,202.72 in petitioner's accountability. However, the Tanodbayan Special Prosecutor deducted these items thereby reducing petitioner's accountability to P44,324.05, as appearing in the Information.<sup>[19]</sup>

The defense presented petitioner himself, Winifredo A. Perez,<sup>[20]</sup> and Timoteo T. Orquina,<sup>[21]</sup> as its witnesses during the trial.

Petitioner admitted that the shortage represented certain infrastructure funds from the MPH and unrecorded interest earned on the municipality's time deposit with the PNB,<sup>[22]</sup> which he used to disburse cash advances to the municipality's employees and officials. He said that instead of recording the infrastructure funds in the cashbook, he entered it as accounts receivable in his Post Closing Trial Balance as of December 31, 1980.<sup>[23]</sup> Further, he did not reflect the funds in his Books of Account because he knew that cash advances are not considered as legitimate disbursements by the auditors. Petitioner also testified that other than the vale slips, the only evidence he had that the municipality's employees and officials made cash advances, were the demand letters he sent to them. Nevertheless, petitioner claimed that all the cash advances were eventually paid after the audit and he had remitted the amount to the Municipal Treasurer.<sup>[24]</sup> He restituted the amount on his own first because he knew that the municipality's employees and officials who were liable therefor would pay him once they were able.

Perez testified that since the salaries of municipal officials often came late, petitioner allowed them to make cash advances evidenced by vale slips. Petitioner returned their vale slips only after their cash advances have been deducted from their salaries. Sometimes, petitioner allowed them to make additional cash advances although he had not yet liquidated their previous cash advances.

Orquina testified that petitioner allowed him to make cash advances for which he signed vale slips. Based on their computation, the two had advanced approximately P9,000 each. On May 8, 1981, they received separate written

demands from petitioner demanding payment of their cash advances. Perez paid P8,500, while Orquina paid P7,500. Petitioner returned their vale slips but they could no longer locate it.

On June 6, 2003, the Sandiganbayan promulgated its decision finding petitioner guilty beyond reasonable doubt of malversation of public funds. Its dispositive portion reads as follows:

WHEREFORE, in view of the foregoing, accused Gabriel [L.] Duero is hereby CONVICTED of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code in the amount of P46,602.54, his guilt therefor having been proven beyond reasonable doubt. Considering his full restitution of the amount malversed which this Court takes as a mitigating circumstance in his favor, and applying provisions of the Indeterminate Sentence Law, the Court hereby imposes upon him the indeterminate penalty of imprisonment ranging from eighteen (18) years of reclusion temporal by way of maximum and ten (10) years and one (1) day of prision mayor by way of minimum.

A fine of P46,602.54, an amount equal to the amount malversed, is imposed, together with special perpetual disqualification from public office.

SO ORDERED.[25]

Petitioner moved for reconsideration which the Sandiganbayan denied on February 17, 2004. Nevertheless, it considered a second mitigating circumstance of voluntary surrender and modified its decision, to wit:

WHEREFORE, the MOTION FOR RECONSIDERATION dated June 20, 2003 filed by the accused Gabriel [L.] Duero of the Decision in Criminal Case No. 11999 promulgated on June 6, 2003 is hereby DENIED for lack of merit. The decision is MODIFIED to include the voluntary surrender of the accused as an additional mitigating circumstance to full restitution of the amount malversed. Considering two (2) mitigating circumstances and applying the Indeterminate Sentence Law, the accused is sentenced to an indeterminate penalty of imprisonment ranging from four (4) years, two (2) months and one (1) day of prision correccional as minimum to ten (10) years and one (1) day of prision mayor as maximum. A fine of P46,602.54, an amount equal to the amount malversed, is likewise imposed, together with special perpetual disqualification from public office.

SO ORDERED.[26]

Hence, the instant appeal. Petitioner submits that the Sandiganbayan erred in finding that:

I

. . . THE EXAMINATION AND AUDIT REPORT PREPARED AND CONDUCTED BY THE EXAMINING AUDITORS WAS REGULARLY CONDUCTED AND THE ALLEGED FUND SHORTAGE OF PETITIONER WAS ACCURATELY ESTABLISHED AS BASIS FOR THE PRESUMPTION RELIED UPON FOR HIS CONVICTION OF MALVERSIONATION.

II

. . . ACTUAL RECEIPT BY PETITIONER OF THE DEMAND REQUIRED FOR THE PRESUMPTION TO ARISE HAD BEEN ESTABLISHED BY COMPETENT EVIDENCE.

III

. . . THE CONSTITUTIONAL RIGHT OF PETITIONER TO DUE PROCESS WAS VIOLATED BY NOT ALLOWING RE-EXAMINATION AND RE-AUDIT OF THE ALLEGED SHORTAGE OF THE PETITIONER.

IV

. . . THE TOTALITY OF THE EVIDENCE AGAINST PETITIONER IS SUFFICIENT TO ESTABLISH PETITIONER'S GUILT OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.[27]

Otherwise stated, the basic issue is: Did the Sandiganbayan err in finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds?

Generally, the factual findings of the Sandiganbayan are conclusive on this Court. However, there are established exceptions, such as when (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record. In these instances, this Court is bound to review the facts in order to avoid a miscarriage of justice.[28]

After careful perusal of the parties' arguments and assiduous examination of the record, we find that such exceptions do not exist in the instant case. No reversible error was committed by the Sandiganbayan in its decision convicting the petitioner as charged.

The crime of malversation is defined and penalized under Article 217 of the Revised Penal Code, which reads:

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:

x x x x

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 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 uses.

Petitioner submits that the presumption, as provided under Article 217, last paragraph, cannot arise in this case because the audit conducted by the Special Audit Team was irregular, incomplete, and inaccurate. He argues, in effect, that the alleged shortage was not established. More particularly, the petitioner alleged that the audit procedure was tainted by the following flaws and deficiencies: (1) from an initial finding of an overage, the audit team declared a shortage which it repeatedly revised; (2) the shortage was eventually declared in the COA regional office and not in Tandag, hence, he was not able to sign the document of shortage; (3) no two disinterested persons were present when the shortage was declared; (4) the audit team did not make a formal demand regarding his final accountability; (5) he was not given a notice of pull out of documents and he was not present when the documents were actually pulled out; (6) the audit team failed to examine his Post Closing Trial Balance as of December 31, 1980; and (7) there was a conflict between the amount of shortage determined by the Tanodbayan and by the audit team.

In our opinion, the Sandiganbayan properly rejected the allegations on the validity of the audit. We are inclined to agree with its observation that the protracted audit became necessary because of petitioner's confusing entries in

his Books of Account, his subsequent absence, and the disappearance of some books under his custody, so much so that it had to be the bookkeeper who had to turn over the documents to the audit team when they returned to Tandag to further verify and check the documents.[29] The erroneous computation initially arrived at by the audit team was caused by the simulated entries made by petitioner himself. The audit team explained the computations adequately and the items in the shortage were sufficiently discussed and explained. In fact, petitioner did not question the items of shortage. At best, he merely offered an explanation for the missing funds.[30]

Our pronouncement in *Tinga v. People*[31] could not apply in the present case, considering the variance in the factual milieu of the cases. In *Tinga*, the amount of shortage was disputed because the audit team failed to consider certain records and past transactions of the defendant. 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.[32] We also ruled then 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 funds are missing is indubitably established.[33]

In the instant case, petitioner admitted the shortage. While the audit examination was admittedly replete with errors in determining the correct amount of shortage, the audit team finally determined it to be P46,602.54. More importantly, they examined all records available. To repeat, the errors were committed due to petitioner's simulated entries and not because pertinent documents were disregarded. In fact, petitioner failed to point any item or record that the audit team overlooked which would have altered his final accountability. He merely raised the excuse of having utilized the shortage to disburse cash advances to the municipality's employees and officials. Thus, we hold that the presumption stands.

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.[34]

Concededly, the first three elements are present in this case. It is the last element, i.e., whether petitioner misappropriated said public funds, that serves as the petitioner's focus. He claims that he used the missing funds for disbursement of cash advances, and not for his personal use. The Sandiganbayan held that this defense is unacceptable, and indicative of petitioner's guilt. On this point, we are in agreement.

To begin with, this defense had been advanced in several cases before this Court, but has been found to be without merit. As held in *Rueda, Jr. v. Sandiganbayan* and other cases:

[T]he practice of disbursing public funds under the "vale" system is not a meritorious defense in malversation cases. The grant of loans through the "vale" system is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, which is punishable by law. To tolerate such a practice is to give a license to every disbursing officer to conduct a lending operation with the use of public funds.[35] (Emphasis supplied.)

Besides, even assuming that petitioner's defense could be acceptable, no vale slips evidencing the cash advances were presented before the Sandiganbayan. True enough, petitioner presented his demand letters[36] to Perez and Orquina for the payment of their cash advances. Yet, we find the same wanting for failing to state with particularity the exact amounts of cash advances made by these officials. In fact, both of them even testified that their computation varied from petitioner's own.

To our mind, the evidence in this case is thoroughly inconsistent with petitioner's claim of innocence.[37] The

Sandiganbayan's decision ought to be affirmed.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated June 6, 2003, and the Resolution dated February 17, 2004, of the Sandiganbayan in Criminal Case No. 11999, convicting petitioner Gabriel L. Duero of the crime of malversation of public funds, and sentencing him to an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional as minimum to ten (10) years and one (1) day of prision mayor as maximum, to pay a fine of P46,602.54, and to suffer special perpetual disqualification from public office, are AFFIRMED.

SO ORDERED.

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

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[1] Rollo, pp. 99-111. Penned by Associate Justice Teresita Leonardo-De Castro, with Associate Justices Diosdado M. Peralta and Francisco H. Villaruz, Jr. concurring.

[2] Id. at 65-98.

[3] Id. at 111.

[4] Exhibits "A" and "1," folder of exhibits. Under COA Regional Office Order No. 81-030.

[5] Composed of Alberto J. Sta. Cruz (Team Leader); Christopher Rivas, Rosenda Buca and Fe B. Iletto, (Members). Iletto was specifically assigned to audit the petitioner's cash and accounts.

[6] Exhibits "B-7" and "2," folder of exhibits. Statement of Cash Accountability of Accountable Officers as of March 16, 1981.

[7] Rollo, p. 80. The Ministry of Public Works and Highways gives quarterly aid to local governments for the maintenance of municipal streets and bridges. The procedure is to record receipt of this amount in the infrastructure cashbook.

[8] Exhibits "M," "M-1," "18" and "18-a," folder of exhibits.

[9] TSN, May 4, 1989, pp. 18-19, 31-32 (A. Sta. Cruz).

[10] Exhibits "D" and "D-1," folder of exhibits.

[11] Exhibits "C" and "8," folder of exhibits.

[12] Records, pp. 1-2.

[13] Id. at 1.

[14] Id. at 127.

[15] Records, pp. 19-24.

[16] Id. at 36.

[17] Exhibits "O" and "20," folder of exhibits.

[18] Consisting of unrecorded trust fund collections (P196.89), underposted collection (P5.83), and attorney's fees (P2,000).

[19] Supra note 12. When computed, P46,602.54 minus P2,202.72 amounts to P44,399.82. There is a discrepancy

of P75.77 which was not explained by the witnesses.

[20] TSN, October 23, 1989, p. 3 (Municipal Councilor of Tandag during the petitioner's incumbency).

[21] TSN, March 5, 1990, pp. 3-4 (President of the Association of Barangay Captains of Tandag during the petitioner's incumbency).

[22] Rollo, p. 461. Consisting of unrecorded infrastructure funds (P22,465.30) and unrecorded interest earned on time deposit (P23,551.78), for a total of P46,017.08.

[23] Exhibits "19," "19-A" and "19-B," folder of exhibits.

[24] Exhibits "19-B," "19-C," "34" and "35," folder of exhibits. The petitioner remitted the amount of P22,465.30 representing the infrastructure funds from the MPH as evidenced by Official Receipt No. 8899517 dated September 25, 1981. On the other hand, the petitioner's salaries from May 1, 1981 to March 31, 1984 (P22,586.38) plus the cash received from the petitioner (P1,550.86) were applied to the unrecorded interest earned on the municipality's time deposit with the PNB amounting to P24,137.24 as evidenced by Official Receipt No. 7213774 dated April 13, 1984. The total of both amounts is P46,602.54.

[25] Rollo, p. 97.

[26] Id. at 110-111.

[27] Id. at 14-15.

[28] Rueda, Jr. v. Sandiganbayan, G.R. No. 129064, November 29, 2000, 346 SCRA 341, 351-352.

[29] Rollo, p. 86.

[30] Id. at 87-88.

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

[32] Id. at 489.

[33] Id. at 488.

[34] Barriga v. Sandiganbayan, G.R. Nos. 161784-86, April 26, 2005, 457 SCRA 301, 313; See Sarigumba v. Sandiganbayan, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 554; Querijero v. People, G.R. No. 153483, February 14, 2003, 397 SCRA 465, 472.

[35] Supra note 28, at 361; See Cain v. Neri, A.M. No. P-98-1267, July 13, 1999, 310 SCRA 207, 211; Re: Financial Audit in RTC, General Santos City, A.M. No. 96-1-25-RTC, April 18, 1997, 271 SCRA 302, 311; Meneses v. Sandiganbayan, G.R. No. 100625, May 20, 1994, 232 SCRA 441, 446.

[36] Exhibits "26" and "28," folder of exhibits.

[37] See People v. Del Castillo, G.R. No. 153254, September 30, 2004, 439 SCRA 601, 617; People v. Go, G.R. No. 144639, September 12, 2003, 411 SCRA 81, 105.

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