HERMOSO ARRIOLA AND MELCHOR RADAN, PETITIONERS, VS. SANDIGANBAYAN, RESPONDENT.

G.R. NO. 165711. June 30, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For allegedly having lost the confiscated lumber entrusted to their custody, petitioners Barangay Captain Hermoso Arriola and Barangay Chief Tanod Melchor Radan of Dulangan, Magdiwang, Romblon were convicted as principal and accessory respectively by the Regional Trial Court of Romblon, Romblon, Branch 81 of the crime of Malversation of Public Property thru Negligence or Abandonment defined and penalized under Article 217 of the Revised Penal Code, in an Information[1] docketed as Criminal Case No. 2064, which alleges –

> That on, about and during the first week of May, 1996, in barangay Dulangan, municipality of Magdiwang, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then a duly appointed/elected Barangay Captain and Chief Tanod of Dulangan, Magdiwang, Romblon and as such, they have under their custody and control approximately forty four (44) pieces of illegally sawn lumbers of assorted sizes and species, with an estimated value of P17,611.20, Philippine currency, which were confiscated or recovered by the elements of the Philippine National Police and DENR personnel and thereafter turned over the same to accused Brgy. Capt. Hermoso Arriola which he acknowledged to have received the same and stockpiled at the backyard of accused Chief Tanod Melchor Radan's house, and through abandonment or negligence, they permitted any other person to take the public property wholly or partially, to the damage and prejudice of the government in the sum of P17,611.20.
>
> Contrary to law.

Upon arraignment, both pleaded not guilty. Trial on the merits ensued thereafter. On May 3, 1998, the trial court rendered its Decision,[2] the dispositive portion of which reads:

> WHEREFORE, this Court finds co-accused barangay captain HERMOSO ARRIOLA GUILTY beyond reasonable doubt as principal of the crime of Malversation of Public Property Thru Negligence or Abandonment and he is hereby sentenced to not less than 14 years and 8 months, as minimum, to 18 years, 2 months and 20 days, as maximum, with the accessories of the law, with the additional penalty of perpetual special disqualification and of a fine of P17,611.20, Philippine Currency, and to pay the sum of P13,209.20 as indemnification of consequential damages to the government.
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> Likewise, co-accused barangay chief tanod MELCHOR RADAN is found GUILTY beyond reasonable doubt as accessory of the crime of Malversation of Public Property Thru Negligence or Abandonment and he is sentenced to not less than 6 years, as minimum, to 8 years and 8 months, as maximum, with the accessories of the law, with the additional penalty of perpetual special disqualification and of a fine of P4,402.80, Philippine Currency, and to pay the sum of P4,402.80 as indemnification of consequential damages to the government.
>
> No subsidiary imprisonment in case of failure to pay the fine is imposed to both accused under Article 39, paragraph 3, RPC but either accused is subsidiarily liable for the quota of either in the indemnity for

> consequential damages to the government (Art. 110, RPC). Both accused shall pay the costs equally.
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> The accused are entitled to credit for preventive imprisonment under Article 29, RPC.
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> The accused are allowed to continue on provisional liberty under the same bail bonds during the period to appeal subject to the consent of the bondsmen (Section 5, Rule 114 of the 1985 Rules on Criminal Procedure as amended.)
>
> SO ORDERED.[3]

Petitioners filed an appeal before the Court of Appeals which referred the same to the public respondent Sandiganbayan on a finding that the latter has jurisdiction over the case.[4] On June 29, 2004, the First Division of the Sandiganbayan resolved[5] thus –

> Notwithstanding the referral of this case to this Court by the Court of Appeals, it appearing that no correction was made of the correct appellate court by the appellant, this Court is constrained to DISMISS the instant case pursuant to Section 2, Rule 50 of the 1997 Revised Rules of Civil Procedure, stating insofar as pertinent, that "(a)n appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright," and the ruling in the case of Moll vs. Buban, et al., G.R. No. 136974 promulgated on August 27, 2002, that the designation of the correct appellate court should be made within the 15-day period to appeal.

Petitioners' motion for reconsideration was denied[6] by the Sandiganbayan; hence, this petition for certiorari alleging grave abuse of discretion of the Sandiganbayan in dismissing their appeal. They maintain that the trial court committed the following errors:

> - IN RULING THAT ACCUSED-APPELLANT HERMOSO ARRIOLA IS AN ACCOUNTABLE PUBLIC OFFICER WITH RESPECT TO CONFISCATED ILLEGALLY LOGGED LUMBER, BY REASON OF THE DUTIES OF HIS OFFICE.
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> - IN RULING THAT ACCUSED-APPELLANT HERMOSO ARRIOLA MISAPPROPRIATED OR CONSENTED OR, THROUGH NEGLIGENCE OR ABANDONMENT, PERMITTED ANOTHER PERSON TO TAKE THE CONFISCATED LUMBER.
>
> - IN RULING THAT ACCUSED-APPELLANT HERMOSO ARRIOLA MALICIOUSLY OR FRAUDULENTLY ATTEMPTED TO MAKE IT APPEAR THAT THE MISSING LUMBER WERE FOUND AND RECOVED (sic).
>
> - IN RULING THAT ACCUSED-APPELLANT MELCHOR RADAN IS AN ACCESSORY AFTER THE CRIME WHO SHOULD BE HELD LIABLE, TOGETHER WITH HIS CO-PETITIONER.
>
> - IN RULING THAT THE GUILT OF BOTH ACCUSED-APPELLANTS WERE ESTABLISHED BY EVIDENCE OF GUILT BEYOND REASONABLE DOUBT.[7]

The factual antecedents of the case are as follows:

At noon on April 22, 1996 Department of Environment and Natural Resources (DENR) Forest Rangers Efren Mandia (Mandia) and Joepre Ferriol, Senior Inspector Noel Alonzo, the team leader of Task Force Kalikasan together with the Chief of Police of Magdiwang, Romblon SPO3 Agustin Ramal and some other police officers, confiscated 44 pieces of illegally sawn lumber totaling 1,174 board feet with an estimated value of P17,611.20.[8]

Mandia scaled the lumber and made notches on most of the pieces before issuing the seizure receipt[9] and turning over its custody to petitioner Arriola in the presence of petitioner Radan. Arriola acknowledged receipt thereof and signed[10] accordingly. Mandia subsequently discovered the lumber missing on May 5, 1996.[11]

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He went back to Barangay Dulangan on May 14, 1996 accompanied by several police officers and Foresters Gerardo Sabigan and Glenn Tansiongco. They requested petitioners to turn over custody of the confiscated lumber but the latter claimed that the same were taken away without their knowledge. Subsequently, petitioners produced lumber and claimed that these were the ones they recovered. Upon closer inspection however, Mandia noted that the lumber produced by petitioners were different from those previously confiscated.

The subsequent investigation conducted by Mandia together with Forester and Officer-in-Charge Gerardo Sabigan, SPO1 Jose Fabrique, Jr., and some members of the Multi-Sectoral Forest Protection Committee showed that the missing lumber was actually hauled to and used in the Magdiwang Cockpit where petitioner Arriola is a stockholder.[12]

On June 10, 1996, a complaint was filed against petitioners before the Romblon Provincial Prosecution Office.

In his defense, Arriola asserts that contrary to the finding of the trial court, he is not an accountable officer insofar as the confiscated lumber is concerned. He maintains that none of the powers, duties and functions of a Barangay Captain as enumerated in the Local Government Code[13] (R.A. 7160) directly or by inference suggests that as such Barangay Captain, he is an accountable officer with respect to the custody of illegally sawn lumber confiscated within his territorial jurisdiction.

He insists that the confiscated lumber was placed in his custody "not by reason of the duties of his office" as Barangay Captain, thus he is not legally accountable to answer for its loss so as to make him liable for Malversation under Art. 217 of the Revised Penal Code. Petitioners claim that they did not misappropriate, abandon or neglect the confiscated lumber and insist that the same were stolen. Arriola claims he visited the stockpiled lumber regularly so the theft probably occurred at night.

With respect to the replacement lumber they subsequently produced, petitioners believed in good faith that the various lumber found scattered in a nearby creek were the missing confiscated lumber left by the thieves who failed to transport them across.

Before going into the merits of the case, we must first resolve the procedural issue of whether the Sandiganbayan correctly dismissed the appeal. The Sandiganbayan anchored its dismissal on this Court's pronouncement in Moll v. Buban[14] that the designation of the wrong court does not necessarily affect the validity of the notice of appeal. However, the designation of the proper court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, Section 2, Rule 50 of the Rules of Court would apply, the relevant portion of which states:

> Sec. 2. Dismissal of improper appeal to the Court of Appeals. –
>
> x x x x
>
> An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

In this case, the records had been forwarded to the Court of Appeals which endorsed petitioners' appeal to the Sandiganbayan. However, petitioners failed to designate the proper appellate court within the allowable time.

We cannot fault the Sandiganbayan for dismissing the appeal outright for it was merely applying the law and existing jurisprudence on the matter. Appeal is not a vested right but a mere statutory privilege; thus, appeal must be made strictly in accordance with provisions set by law.[15] Section 2, Rule 50 clearly requires that the correction in designating the proper appellate court should be made within the 15-day period to appeal.

However, the rules of procedure ought not to be applied in a very rigid, technical sense for they have been adopted to help secure – not override – substantial justice.[16] This Court has repeatedly stressed that the ends of justice would be served better when cases are determined, not on mere technicality or some procedural nicety, but on the merits – after all the parties are given full opportunity to ventilate their causes and defenses. Lest it be forgotten, dismissal of appeals purely on technical grounds is frowned upon.[17]

Having resolved the procedural issue, we shall now proceed to the merits of the case. The issue boils down to whether or not petitioners Arriola and Radan are accountable officers within the purview of Article 217 of the Revised Penal Code in relation to the confiscated items.

To find an accused guilty of malversation, the prosecution must prove the following essential elements:

> a.] The offender is a public officer;
>
> b.] He has the custody or control of funds or property by reason of the duties of his office;
>
> c.] The funds or property involved are public funds or property for which he is accountable; and
>
> d.] 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.

An accountable officer under Article 217 is a public officer who, by reason of his office is accountable for public funds or property. Sec. 101 (1) of the Government Auditing Code of the Philippines (PD No. 1455) defines accountable officer to be every officer of any government agency whose duties permit or require the possession or custody of government funds or property and who shall be accountable therefor and for the safekeeping thereof in conformity with law.[18]

In the determination of who is an accountable officer, it is the nature of the duties which he performs – and not the nomenclature or the relative importance the position held – which is the controlling factor.[19]

Is petitioner Arriola, who signed as custodian in the seizure receipt for the confiscated lumber an accountable officer with respect to its loss?

Chapter IV, I-E, (4) of the DENR Primer on Illegal Logging states that:

> In cases where the apprehension is made by the field DENR officer, the forest products and the conveyance used shall be deposited to the nearest CENRO/PENRO/RED office, as the case may be, for safekeeping, wherever it is most convenient. If the transfer of the seized forest products to the above places is not immediately feasible, the same shall be placed under the custody of any licensed sawmill operator or the nearest local public official such as the Barangay Captain, Municipal/City Mayor, Provincial Governor or the PC/INP; at the discretion of the confiscating officer taking into account the safety of the confiscated forest products x x x. In any case, the custody of the forest products shall be duly acknowledged and receipted by the official taking custody thereof.

In the case of United States v. Lafuente,[20] the accused was a Municipal Secretary and a member of the auction committee. A public auction for the sale of fishery privileges was held pursuant to the provisions of the Municipal Law and a municipal ordinance. When the auction was concluded, the bidders deposited the amount of their respective bids with the accused. The latter embezzled the money for his personal use. It was held that the accused is guilty of misappropriation of public funds. Although a Municipal Secretary's duties do not normally include the receipt of public funds, the accused in this case was nonetheless held accountable for the same because the money was deposited with him under authority of law. The obligation of the secretary was to safeguard the money for the Government.[21]

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In the instant case, Arriola knowingly and willingly signed the seizure receipt for the confiscated articles. By affixing his signature in said document, he undertook to safeguard the lumber on behalf of the Government. The receipt contains a provision which states that as custodian, Arriola "obliges himself to faithfully keep and protect to the best of his ability the said seized articles from defacement in any manner, destruction or loss and that he will never alter or remove said seized articles until ordered by the Secretary of Environment and Natural Resources or his duly authorized representative or any court of Justice in the Philippines."

Although his usual duties as Barangay Captain do not ordinarily include the receipt of confiscated articles on behalf of the Government, by virtue of the DENR Primer on Illegal Logging, which had for its basis Section 68 of Presidential Decree No. 705,[22] he may be called on to take custody thereof as the need arises. Furthermore, by affixing his signature in the seizure receipt which clearly enumerates his obligations as a custodian therein, he effectively becomes an accountable officer therefor.

The records show that prior to its confiscation by the DENR officers on April 22, 1996, the lumber was previously apprehended by Arriola on April 19, 1996.[23] Thus, even without the seizure receipt where he signed as custodian for the said lumber, Arriola was accountable therefor because he was the one who originally took possession of it on behalf of the government.

His claim that the trial court erred in holding him liable for malversation through negligence or abandonment lacks merit. The lumber curiously turned up at the Magdiwang cockpit structure where he happens to be a stockholder. Also, Arriola admitted that he already knew about the missing lumber long before the DENR officers came back to get it but he did not inform them about its loss because "somebody advised me not to report because the one who got the lumber might panic and tuluyan na ang lumber."[24]

He even produced 44 pieces of lumber and passed it off as those missing. The evidence showed however that the species was of a cheaper quality and did not bear the markings made by the apprehending officers of the DENR. All told, his alibi and denials cannot prevail over the credible testimonies of government witnesses which corroborated each other. His defenses did not withstand the onslaught of clear and obvious physical, documentary and testimonial evidence adduced by the prosecution.

With respect to petitioner Radan, the trial court erred in judging him liable as an accessory.

Article 19, par. 2 of the Revised Penal Code defines accessories as those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission by concealing or destroying the body of the crime or the effects or instruments thereof, in order to prevent its discovery.

In the case at bar, the evidence adduced by the prosecution to prove Radan's liability as an accessory were neither clear nor convincing. His presence during the time when the DENR officers turned over the custody of the seized items to Arriola is not enough proof of complicity, nor the fact that the confiscated lumber was placed behind his father's house. The assertion that he was responsible for the alleged transport of the confiscated articles to the cockpit in Dulangan was a mere conjecture.

In all criminal cases, mere speculations cannot substitute for proof in establishing the guilt of the accused.[25] When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[26]

We now come to the penalty which should be imposed on petitioner Arriola. According to Article 217, paragraph 4 of the Revised Penal Code, the penalty for malversation is reclusion temporal in its medium and maximum periods, if the amount involved is more than P12,000 but less than P22,000. Applying the Indeterminate Sentence

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Law, and there being no mitigating or aggravating circumstances, the maximum imposable penalty shall be within the range of 16 years, 5 months and 11 days to 18 years, 5 months and 20 days, while the minimum shall be within the range of 10 years and 1 day to 14 years and 8 months. The trial court therefore properly imposed the penalty of imprisonment to petitioner Arriola ranging from 14 years and 8 months, as minimum, to 18 years, 2 months and 20 days, as maximum.

Under the second paragraph of Art. 217, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of funds malversed or equal to the total value of the property embezzled, which in this case is P17,611.20. There will be no subsidiary imprisonment because the principal penalty imposed is higher than prision correccional.[27]

WHEREFORE, the May 3, 1998 Decision of the Regional Trial Court of Romblon, Romblon, Branch 81 in Criminal Case No. 2064 finding petitioner Hermoso Arriola guilty of Malversation of Public Property thru Negligence or Abandonment and sentencing him to suffer the penalty of imprisonment to not less than 14 years and 8 months, as minimum, to 18 years, 2 months and 20 days, as maximum, with the accessories of the law, with the additional penalty of perpetual special disqualification and a fine of P17,611.20 is AFFIRMED with MODIFICATIONS in that the imposition of consequential damages on petitioner Hermoso Arriola is ordered DELETED for lack of legal basis. Petitioner Melchor Radan is ACQUITTED for insufficiency of evidence.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.
Panganiban, C.J. (Chairperson), on official leave.

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[1] Sandiganbayan records, p. 1.

[2] Rollo, pp. 41-49. Penned by Judge Placido C. Marquez.

[3] Id. at 48.

[4] CA Resolution dated August 5, 2003, Sandiganbayan records, pp. 252-253. Penned by Associate Justice Salvador J. Valdez, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale.

[5] Id. at 314.

[6] Id. at 328.

[7] Rollo, pp. 7-8.

[8] Id. at 42.

[9] Sandiganbayan records, pp. 91-94.

[10] Id. at 82.

[11] Rollo, p. 42.

[12] TSN, August 4, 1997, p. 44.

[13] Section 389, Chapter 3, Title One, Book III.

[14] G.R. No. 136974, August 27, 2002, 388 SCRA 63, 70.

[15] Alfonso v. Andres, G.R. No. 139611, October 4, 2002, 390 SCRA 465, 470.

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[16] Remulla v. Manlongat, G.R. No. 148189, November 11, 2004, 442 SCRA 226, 236.

[17] Id.

[18] Querijero v. People, G.R. No. 153483, February 14, 2003, 397 SCRA 465, 473.

[19] Id. at 473-474.

[20] 37 Phil. 671 (1918).

[21] See The Revised Penal Code, Book II, Luis B. Reyes, 14[th] Edition, 1998, p. 407.

[22] The Forestry Reform Code of the Philippines.

[23] TSN, November 11, 1997, pp. 3-4; TSN, August 4, 1997, p. 31.

[24] TSN, November 11, 1997, p. 14.

[25] Fernandez v. People, G.R. No. 138503, September 28, 2000, 341 SCRA 277, 299.

[26] Monteverde v. People, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 215.

[27] Art. 39, par. 3, RPC.

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