

RAUL S. TELLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 165781. June 05, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari[1] assailing the Decision[2] promulgated on 19 March 2004 and the Resolution[3] promulgated on 1 September 2004 of the Sandiganbayan in Criminal Case No. 15006.

The Antecedent Facts

Raul S. Tello (petitioner) was a Telegraph Operator and Telegraphic Transfer-in-Charge of the Bureau of Telecommunications in Prosperidad, Agusan del Sur. On 5 December 1986, Lordino Tomampos Saligumba (Saligumba), Commission on Audit Auditor II assigned at the office of the Provincial Auditor of Agusan del Sur, received an order directing him and Dionisio Virtudazo (Virtudazo) to conduct an audit examination of petitioner's accounts. Saligumba and Virtudazo (the auditors) conducted an audit from 8 to 10 December 1986 where it was initially determined that petitioner had a shortage in the total amount of P6,152.90. When the auditors questioned petitioner on the official receipts of the bank to confirm the remittance advices, petitioner informed them that they were sent to the regional office of the Bureau of Telecommunications. Saligumba wrote the unit auditor of the Philippine National Bank (PNB), San Francisco, Agusan del Sur branch, requesting for confirmation of petitioner's remittances and a list of validated remittances from 1 January to 9 December 1986. In a letter dated 10 December 1986, PNB's branch auditor informed Saligumba that petitioner did not make any remittance to the bank from 31 July 1985 to 30 October 1986. Saligumba secured copies of the official receipts and compared them with the remittance advices submitted by petitioner and found that the bank's official receipts did not correspond with petitioner's remittance advices.

The auditors found that the total shortage incurred by petitioner amounted to P204,607.70.

Saligumba wrote petitioner a letter dated 11 December 1986 outlining the results of the examination and demanding the immediate production and restitution of the missing amounts. However, petitioner failed to submit his explanation and to produce or retribute the missing funds. Petitioner also failed to show in his office starting 8 December 1986.

Petitioner was charged before the Sandiganbayan with malversation of public funds under Article 217 of the Revised Penal Code (RPC), thus:

That on or about and prior to December 11, 1986, in Prosperidad, Agusan del Sur and within the jurisdiction of this Honorable Court, accused, a public employee, being then a Telegraph Operator and Telegraphic Transfer-In-Charge of Prosperidad, Agusan del Sur, Bureau of Telecommunication[s,] and as such accountable for the public funds collected and/or received by him, with grave abuse of confidence, did then and there,

wilfully and unlawfully misappropriate, embezzle and convert for his own personal use and benefit from said funds the amount of P219,904.05 to the damage and prejudice of the government in the afore-stated amount.

CONTRARY TO LAW.[4]

Petitioner did not present any testimonial evidence for his defense. He only manifested that as far as he was concerned, the initial findings of the auditors showed only a shortage of P6,152.90. He disputed the initial and final findings of the auditors for being unreliable. Petitioner further alleged that as an acting telecom operator, he was not an accountable officer.

The Ruling of the Sandiganbayan

In its 19 March 2004 Decision, the Sandiganbayan found petitioner guilty beyond reasonable doubt of malversation of public funds. The Sandiganbayan ruled that the prosecution was able to establish the elements of the crime, thus:

- that the offender is a public officer;
- that he has the custody and control of funds or property by reason of the duties of his office;
- that the funds or property are public funds or property for which he is accountable; and
- that he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.

The Sandiganbayan held that while petitioner disputed the amount of the shortage, he did not deny that he incurred the shortage. The Sandiganbayan further noted that when the auditors examined the cashbooks and found the shortage, petitioner did not show up for work anymore. Neither did petitioner question the cash examination report. The Sandiganbayan stated that it took petitioner almost three years before he submitted himself to the jurisdiction of the court, and it was only because he was arrested in another province.

However, the Sandiganbayan modified the amount of shortage to P204,607.70 instead of P219,904.05 in the information.

The dispositive portion of the Sandiganbayan's decision reads:

WHEREFORE, judgment is hereby rendered finding the accused, Raul S. Tello, guilty beyond reasonable doubt of the crime of Malversation defined in and penalized by Article 217 of the Revised Penal Code, as amended, and he is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day of reclusion temporal minimum, as the minimum penalty, to eighteen (18) years and one (1) day of reclusion temporal, maximum, as the maximum penalty, there being no mitigating or aggravating circumstance attendant to the commission of the crime. Accused is further sentenced to suffer the penalty of perpetual special disqualification and is likewise ordered to pay a fine equivalent to the amount malversed or the amount of P204,607.70, and to indemnify the Bureau of Telecommunications the amount of P204,607.70 with interest thereon.

Costs against the accused.

SO ORDERED.[5]

Petitioner filed a motion for reconsideration assailing his conviction and arguing that the Sandiganbayan's decision was void because it was rendered and promulgated after nine years and five months from the time it was submitted for decision.

In its 1 September 2004 Resolution, the Sandiganbayan denied petitioner's motion for lack of merit. The

Sandiganbayan ruled that the right to speedy disposition of cases, which petitioner invoked for the first time in the motion for reconsideration, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. There was no violation when petitioner failed to seasonably establish his right.

Hence, the petition before this Court.

The Issues

The issues in this case are the following:

- Whether petitioner is guilty beyond reasonable doubt of the crime of malversation of public funds under Article 217 of the RPC;
- Whether Saligumba has authority to conduct the audit examination; and
- Whether petitioner was denied his constitutional right to a speedy disposition of his case.

The Ruling of this Court

The petition has no merit.

Malversation of Public Funds

Article 217 of the RPC states:

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 uses.

The elements of malversation of public funds under Article 217 of the RPC are:

- that the offender is a public officer;
- that he had the custody or control of funds or property by reason of the duties of his office;
- that those funds or property were public funds or property for which he was accountable; and

- that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[6]

In this case, all the elements of the crime are present.

Petitioner is a public officer. He took his Oath of Office[7] as Acting Operator-in-Charge on 13 January 1982. Regional Office Order No. 35[8] dated 27 September 1984 designated petitioner as Telegraphic Transfer-in-Charge aside from his regular duties as Acting Operator-in-Charge of Prosperidad, Agusan del Sur. He was appointed Telegraph Operator effective 1 March 1986.[9]

As Telegraph Operator and Telegraphic Transfer-in-Charge, petitioner was in charge of the collections which he was supposed to remit to the PNB. The funds are public funds for which petitioner was accountable. It was also established that petitioner misappropriated the money. He failed to remit his cash collections and falsified the entries in the cashbooks to make it appear that he remitted the money to PNB. Petitioner failed to explain the discrepancies and shortage in his accounts and he failed to reconstitute the missing amount upon demand. It was also established that petitioner stopped reporting to work starting 8 December 1986.

Petitioner did not present any testimonial evidence for his defense. Instead, he merely manifested that he only incurred a shortage of P6,152.90, the initial shortage found by the auditors.

The last paragraph of Article 217 of the RPC states: "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."

In this case, petitioner failed to rebut the presumption of malversation. He did not present testimonial evidence to defend himself. He practically admitted the shortage except that he manifested, contrary to the evidence presented by the prosecution, that only the amount of P6,152.90 was missing. He did not report to his office when the audit examination started. We sustain the Sandiganbayan's finding that petitioner's guilt has been proven beyond reasonable doubt.

Authority of the Provincial Auditor's Office to Conduct Audit Examinations

Petitioner alleges that Saligumba, who was an examiner of the Provincial Auditor's Office, has no authority to conduct the audit examination.

We do not agree.

Petitioner is assigned as Telegraph Operator and Telegraphic Transfer-in-Charge of the Municipality of Prosperidad, Agusan del Sur which is within the jurisdiction of the Provincial Auditor's Office. Presidential Decree No. 1445[10] (PD 1445) created not only a central but also regional auditing offices. Section 7(2) of PD 1445 states:

The Commission shall keep and maintain such regional offices as may be required by the exigencies of the service in accordance with the Integrated Reorganization Plan for the national government, or as may be provided by law, which shall serve as the immediate representatives of the Commission in the regions under the direct control and supervision of the Chairman.

The authority of the Provincial Auditor's Office emanates from the central office as its representative.

Violation of Petitioner's Right to Speedy Disposition of Cases

Petitioner raised for the first time in his motion for reconsideration before the Sandiganbayan that his right to a speedy disposition of his case had been violated. Petitioner pointed out that his case was submitted for decision on

26 October 1994 but was only decided by the Sandiganbayan on 19 March 2004.

We disagree.

Section 16, Article III of the Constitution provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."

In ascertaining whether the right to speedy disposition of cases has been violated, the following factors must be considered: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[11] The right to a speedy disposition of cases is considered violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.[12] A mere mathematical reckoning of the time involved is not sufficient.[13] In the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case.[14]

In *Bernat v. Sandiganbayan*,^[15] the Court denied petitioner's claim of denial of his right to a speedy disposition of cases considering that the petitioner in that case chose to remain silent for eight years before complaining of the delay in the disposition of his case. The Court ruled that petitioner failed to seasonably assert his right and he merely sat and waited from the time his case was submitted for resolution. In this case, petitioner similarly failed to assert his right to a speedy disposition of his case. He did not take any step to accelerate the disposition of his case. He only invoked his right to a speedy disposition of cases after the Sandiganbayan promulgated its decision convicting him for malversation of public funds. Petitioner's silence may be considered as a waiver of his right.^[16]

WHEREFORE, we DENY the petition. We AFFIRM the 19 March 2004 Decision and the 1 September 2004 Resolution of the Sandiganbayan in Criminal Case No. 15006.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Nachura,^[*] and Bersamin, JJ., concur.

[*] Designated additional member per Raffle dated 1 June 2009.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 35-43. Penned by Associate Justice Diosdado M. Peralta with Associate Justices Teresita J. Leonardo-De Castro and Roland B. Jurado, concurring.

[3] *Id.* at 51-54.

[4] *Id.* at 33.

[5] *Id.* at 42.

[6] *Ocampo III v. People*, G.R. Nos. 156547-51, 4 February 2008, 543 SCRA 487.

[7] Folder of Exhibits, Exhibit "I."

[8] *Id.*, Exhibit "G."

[9] *Id.*, Exhibit "H."

[10] *Ordaining and Instituting a Government Auditing Code of the Philippines*, 11 June 1978.

[11] *Tilendo v. Ombudsman*, G.R. No. 165975, 13 September 2007, 533 SCRA 331.

[12] *Id.*

[13] *Rodriguez v. Sandiganbayan*, 468 Phil. 375 (2004).

[14] *Id.*

[15] G.R. No. 158018, 20 May 2004, 428 SCRA 787.

[16] *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001).

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