

HERMES E. FRIAS, SR. PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 171437. October 04, 2007

Ponente: CORONA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-171437/>

CORONA, J.:

This petition for review on certiorari[1] seeks to set aside the decision[2] of the Sandiganbayan in Criminal Case No. 26321 and its resolution[3] denying reconsideration.

Petitioner Hermes E. Frias, Sr. was charged with violation of Article 218 of the Revised Penal Code[4] under the following Information:

That on or about December 18, 1997 or sometime prior or subsequent thereto, in the municipality of Capas, province of Tarlac, and within the jurisdiction of this Honorable Court, accused HERMES E. FRIAS, SR., an accountable officer, being then the Municipal Mayor of Capas, Tarlac, after being required by the Commission on Audit to settle his disallowed cash advances under Voucher Nos. 101-97-09-878 and 101-97-11-1156 for the amounts of FIFTY THOUSAND PESOS (P50,000) and NINE HUNDRED FIFTY THOUSAND PESOS (P950,000), respectively, did then and there, willfully, unlawfully and feloniously fail to render accounts for a period of two months after such accounts should have been rendered, to the damage and prejudice of the government in the aforestated amounts.

CONTRARY TO LAW.[5]

Petitioner pleaded not guilty during arraignment. After pre-trial, trial on the merits followed.

The prosecution presented Tarlac provincial auditor Lualhati C. Abesamis of the Commission on Audit (COA) as its sole witness.[6] Abesamis testified that she and her team, in the course of their audit examination,[7] discovered that petitioner, on behalf of the Municipality of Capas, made cash advances amounting to P50,000[8] and P950,000[9] (or a total of P1,000,000). These cash advances were allocated for the maintenance of economic enterprises[10] and the augmentation of the general fund,[11] respectively. Abesamis and her team, however, found these purposes too vague. Thus, they disallowed the cash advances due to petitioner's failure to indicate a specific legal purpose.[12]

On December 18, 1997, Abesamis notified petitioner, municipal treasurer Norma R. Panganiban and municipal accountant Rolando T. Domingo of the disallowance of the municipality's cash advances and directed them to settle the P1,000,000 immediately.[13] Neither Panganiban nor Domingo returned the amount. Hence, Abesamis requested petitioner to settle the disallowed cash advances. Petitioner, however, refused for the reason that he gave the proceeds of the cash advances to Panganiban.[14]

Abesamis, mindful of petitioner's predicament, pointed out that the cash advances were made under his (petitioner's) authority. Moreover, the checks were payable to him (as payee) and he admitted receipt thereof.[15] For this reason, even if he gave the proceeds to Panganiban, he was still required to return the P1,000,000.[16]

Notwithstanding Abesamis' demand, petitioner did not account for the cash advance. Thus, Abesamis recommended the filing of this criminal complaint against petitioner.[17]

In his defense, petitioner argued that he was not liable for the cash advances because he did not derive any benefit from them.[18] Panganiban alone benefited from the cash advances as she used the P1,000,000 to settle her existing deficiencies with the Commission on Audit (COA).[19] Petitioner pointed out that the COA, upon Abesamis' recommendation, also filed a criminal complaint against Panganiban.[20]

On December 6, 2005, the Fourth Division of the Sandiganbayan found petitioner guilty as charged due to the concurrence of the following elements:

- petitioner was a public officer;
- he was an officer accountable for public funds or property;
- he was required by law or regulation to render accounts to the COA or provincial auditor and
- he failed to render an account for the period of two months after such accounts should have been rendered.[21]

According to the Sandiganbayan, in spite of the fact that Panganiban alone benefited from the disallowed cash advances, petitioner, as municipal mayor, was responsible and accountable for it.[22] Moreover, petitioner was liable to return the proceeds to the Government in view of his failure to account for the cash advances.[23]

WHEREFORE, proceeding from the foregoing, judgment is hereby rendered finding accused HERMES E. FRIAS, Sr. GUILTY beyond reasonable doubt of violation of Article 218 of the Revised Penal Code. In the absence of any attendant modifying circumstances and applying the Indeterminate Sentence Law, he is hereby sentenced to: (a) suffer the penalty of imprisonment for a minimum of eight (8) months and eleven (11) days to a maximum of one (1) year, eight (8) months and twenty (20) days; (b) suffer all the appropriate accessory penalties consequent thereto; (c) indemnify the Government in the amount of One Million Pesos (Php1,000,000.00); and (d) pay the costs.[24]

Petitioner moved for reconsideration but it was denied. Thus, this petition.

Petitioner asserts that he was deprived of due process because the Information against him failed to identify his acts or omissions which constituted a violation of Article 218 of the Revised Penal Code.[25] Moreover, the Sandiganbayan failed to establish that he, a municipal mayor, was an accountable officer[26] and to identify the particular law or regulation which required him to render an account.[27] Lastly, he assailed the restitution of P1,000,000 to the Government for lack of legal basis.[28]

We affirm the decision of the Sandiganbayan, with modification.

ACCUSED WAS NOT DEPRIVED OF DUE PROCESS

We note that it is only now that petitioner is questioning the sufficiency of the Information against him. It is too late.

The right to question the sufficiency of an Information is not absolute. An accused is deemed to have waived this right if he fails to object upon his arraignment[29] or during trial.[30] In either case, evidence presented during trial can cure the defect in the Information.[31] Petitioner waived his right to assail the sufficiency of the Information when he voluntarily entered a plea when arraigned and participated in the trial. At any rate, the Information (quoted above) adequately informed petitioner of the charges against him. It clearly stated the

elements which constituted the violation of Article 218 of the Revised Penal Code.

PETITIONER IS AN ACCOUNTABLE PUBLIC OFFICER

Under the Government Auditing Code of the Philippines, an accountable public officer is a public officer who, by reason of his office, is accountable for public funds or property.[32] The Local Government Code expanded this definition with regard to local government officials. Section 340 thereof provides:

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. (emphasis supplied)

Local government officials become accountable public officers either (1) because of the nature of their functions or (2) on account of their participation in the use or application of public funds.

Of primordial interest in this case is whether petitioner, a municipal mayor, is an accountable public officer.

According to the Local Government Code, municipal mayors are chief executives of their respective municipalities.[33] Section 102 of the Government Auditing Code of the Philippines provides:

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.

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government. (emphasis supplied)

In *Barriga v. Sandiganbayan*,[34] we held that public officers are accountable if they, as part of their duties, receive public funds or property which they are bound to account for but fail to do so.[35]

Petitioner never denied that he received the checks representing the disallowed cash advances. He in fact admitted that the disallowed cash advances were made under his authority, that he was the payee of the checks and that he received them. Thus, it is clear that he, as municipal mayor, received and had possession of (and consequently was accountable for) the cash advances. Petitioner was undeniably an accountable officer.

SECTION 347 OF THE LOCAL GOVERNMENT CODE AND SECTION 5 OF COA-CIRCULAR 97-002 REQUIRE ACCOUNTABLE OFFICERS TO RENDER AN ACCOUNT

Because petitioner was an accountable officer, he was obliged to liquidate the cash advances. However, considering that the cash advances were disallowed, petitioner was bound to return the P1,000,000 to the Government. Section 347 of the Local Government Code provides:

Section 347. Rendition of Accounts. - Local treasurers, accountants and other local accountable officers shall render their accounts within such time, in such form, style, and content and under such regulations as the COA may prescribe.[36]

Province, city, and municipal auditors shall certify the balances arising in the accounts settled by them to the

Chairman of the COA and to the local treasurer, accountant, and other accountable officers. Copies of the certification shall be prepared and furnished other local officers who may be held jointly and severally liable for any loss or illegal, improper or unauthorized use or misappropriation of local funds or property. (emphasis supplied)

Likewise, Section 5 of COA Circular 97-002 provides:

5.

LIQUIDATION OF CASH ADVANCES

5.1.

The accountable officer shall liquidate his cash advance as follows:

xxx xxx xxx

5.1.2.

Petty Operating Expenses and Field Operating Expenses-- within twenty (20) days after the end of the year; subject to replenishment as frequently as necessary during the year.[37]

xxx xxx xxx

5.4.

Within thirty (30) days from receipt of their report and supporting documents from the Accountants, the Auditor shall complete the audit. He shall issue the corresponding Credit Notice to the accountable officer to inform the latter of the amount allowed in audit and any suspension and/or disallowances made. In case of disallowance, a copy of the Credit Notice shall be furnished the Accountant who shall record the restoration of the cash advance for the amount allowed in audit by the Auditor as contained in the Credit Notice shall be deemed to have been settled.

xxx xxx xxx

5.8.

All cash advances shall be fully liquidated at the end of each year. Except for petty cash funds, the accountable officer shall refund any unexpended balance to the Cashier/Collecting Officer who will issue the necessary official receipt. (emphasis supplied)

Petitioner had until January 20, 1998[38] to settle the disallowed cash advances. To escape liability for violating Article 218 of the Revised Penal Code, despite his failure to timely return the P1,000,000, petitioner should have settled the cash advances on or before March 20, 1998.[39]

When Abesamis demanded an accounting of the cash advances from petitioner, he could have compelled Panganiban to render the necessary accounting or he could have simply prepared it himself. Petitioner, however, did neither. When asked why he did not liquidate the P1,000,000, petitioner nonchalantly gave the excuse that he was too busy preparing for the forthcoming elections[40] and for his defense in a murder case.[41] He never settled the disallowed cash advances. Consequently, he was guilty of violating Article 218 of the Revised Penal Code.

PETITIONER IS LIABLE TO RETURN P1,000,000 TO THE GOVERNMENT

Inasmuch as the cash advances were disallowed and petitioner failed to return the P1,000,000 within the allowable period, the funds were deemed illegally or improperly used or applied. Section 342 of the Local Government Code states:

Section 342. Liability for Acts Done Upon the Direction of Superior Officers; or Upon Participation of Other Department Heads or Officers of Equivalent Rank. Unless he registers his objection in writing, the local treasurer, accountant, budget officer or other accountable officer shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of his having acted upon the direction of a superior officer, elective or appointive, or upon participation of other department heads or officers of equivalent rank. The superior directing, or the department head participating in such illegal or improper use or application or deposit of government funds or property shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally and improperly used, applied or deposited. (emphasis supplied)

Petitioner is liable to restitute the P1,000,000 to the Government without prejudice, however, to his right to recover it from persons who were solidarily liable with him.[42]

IMPOSABLE PENALTY

We modify the penalty imposed by the Sandiganbayan.

Under the Indeterminate Sentence Law, the maximum penalty should be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code. In the absence of modifying circumstances, the penalty should be imposed in its medium period; in this case, the medium of prisión correccional in its minimum period (i.e., 1 year, 1 month and 11 days to 1 year, 8 months and 20 days).[43] The minimum term of the indeterminate penalty should be taken from the minimum period of the penalty next lower in degree (i.e., arresto mayor in its maximum period, from four months and one day to six months). The maximum term, on the other hand, should be taken from the medium of prisión correccional in its minimum period.

In addition, petitioner is sentenced to pay a fine of P6,000.[44]

WHEREFORE, the decision of the Sandiganbayan in Criminal Case No. 26321 finding petitioner Hermes E. Frias, Sr. GUILTY of violating Article 218 of the Revised Penal Code is hereby AFFIRMED. He is hereby sentenced to a minimum of six months of arresto mayor in its maximum period to a maximum of one year, eight months and 20 days of the medium of prisión correccional in its minimum period and all appropriate accessory penalties consequent thereto.[45] He is further ORDERED to pay a FINE of P6,000 and to indemnify the Government in the amount of P1,000,000.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Reyes, JJ., concur.

Nachura, J., no part.

* The records also refer to petitioner as "Jermes E. Frias, Sr."

[1] Under Rule 125 in relation to Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Gregory S. Ong and concurred in by Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada of the Fourth Division of the Sandiganbayan. Dated December 6, 2005. Rollo, pp. 86-106.

[3] Penned by Associate Justice Gregory S. Ong and concurred in by Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada of the Fourth Division of the Sandiganbayan. Dated February 9, 2006. Id., pp. 33-39.

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

[5] Id., pp. 56, 86, 118, 145-146.

[6] Id., p. 87. At the time her testimony was taken, state auditor V Abesamis was designated as cluster director of the national government sector of the COA.

[7] Covering the period beginning July 1, 1997 and ending November 20, 1997.

[8] Id., pp. 108, 110. Covered by voucher no. 101-97-09-878 dated September 12, 1997 and Land Bank check no. 157338, payable to Dr. Hermes E. Frias, Sr., dated September 12, 1997.

[9] Id., pp. 109, 111. Covered by voucher no. 101-97-11-1156 dated November 18, 1997 and Land Bank check no. 254233, payable to Dr. Hermes E. Frias, Sr., dated November 17, 1997.

[10] Id., p. 108. According to petitioner, this account pertained to the maintenance of the Capas public market.

[11] Id., p. 109.

[12] See LOCAL GOV'T. CODE, Sec. 339. The section provides:

Section 339. Cash Advances. No cash advance shall be granted to any local official or employee, elective or appointive, unless made in accordance with the rules and regulation as the COA may prescribe.

See also GOV'T. AUDITING CODE, Sec. 89. The section provides:

Section 89. Limitations on cash advance.-- No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made. (emphasis supplied)

See also COA Circular No. 97-002 dated February 10, 1997, Section 4.1.1. The section provides:

4. GRANTING AND UTILIZATION OF CASH ADVANCES

4.1. General Guidelines

4. No [c]ash advance shall be given unless for a legally specific purpose. (emphasis supplied)

[13] Rollo, pp. 88, 112. Petitioner acknowledged COA's notice of disallowance on January 12, 1998.

[14] *Id.*, p. 88.

[15] *Supra* notes 7 and 8.

[16] *Id.*, p. 89.

[17] *Id.*, p. 90.

[18] *Id.*, pp. 91-99.

[19] *Id.* Petitioner's testimony was corroborated by the testimonies of assistant municipal treasurer Onofre L. Nabua, Jr., COA state auditor IV (assigned to the Tarlac branch of Land Bank) Natividad D. Caoili and municipal bookkeeper Marissa V. Vidal.

[20] *Id.*, p. 90. The Provincial Prosecutor of Tarlac, however, dismissed the complaint.

[21] *Id.*, p. 100. See *Campomanes v. People*, G.R. No. 161950, 19 December 2006. See also *United States v. Saberon*, 19 Phil. 391 (1911).

[22] *Id.*, p. 99-105.

[23] *Id.*, p. 105.

[24] *Id.*

[25] *Id.*, p. 4.

[26] *Id.*, pp. 19-21.

[27] *Id.*, pp. 16-19, 21-27.

[28] *Id.*, pp. 24-28.

[29] *Id.*, pp. 346-347.

[30] *People v. Galido*, G.R. No. 148689-92, 30 March 2004, 426 SCRA 502, 512.

[31] *Id.*

[32] See GOV'T AUDITING CODE, Sec. 101 (1). The section provides:

Section 101. Accountable officers; bond requirement - (1) Every officer of any government agency whose duties permit or require the possession or custody of government funds shall be accountable therefor and for the safekeeping thereof in conformity thereof.

2) Every accountable officer shall be properly bonded in accordance with law. (emphasis supplied)

See *Arriola v. Sandiganbayan*, G.R. No. 165711, 30 June 2006, 494 SCRA 344, 353.

[33] See LOCAL GOV'T CODE, Sec. 444(a). The section provides:

Sec. 444. The Chief Executive: Powers, Duties, Functions and Compensation. (a) The municipal mayor, as chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws. xxx

[34] G.R. Nos. 161784-86, 26 April 2005, 457 SCRA 301.

[35] Id., pp. 315-316.

[36] Cf. GOV'T AUDITING CODE, Sec. 107. The section provides:

Section 107. Time and mode of rendering account. - In the absence of specific provisions of law, all accountable officers shall render their accounts, submit their vouchers and make deposits of money collected or held by them at such times and in such manner as shall be prescribed in the regulations of the Commission.

[37] Under COA Circular 97-002, a public officer can obtain cash advances for salaries and wages, petty operating and field operating expenses or traveling expenses. In petitioner's case, the cash advances were supposed to be used for the upkeep of the municipal public market and to augment the municipality's general fund. Thus, they would have been used for the operations of the municipality.

[38] Petitioner had 20 days from December 31, 1997. See COA Circular 97-002, Sec. 5.1.2.

[39] Supra note 4. Under Sec. 5 of COA Circular 97-002, the accused should have returned the money by January 20, 1998. (See also footnote no. 38) However, Art. 218 of the Revised Penal Code, states that the criminal liability arises only if the accountable officer fails to render the account (or in this case, return the money) within 2 months after he should have made a liquidation (or returned the money). Thus, because Frias did not return the disallowed cash advances on March 20, 1998, he became criminally liable.

[40] Rollo, p. 94. This pertains to the 1998 national and local elections.

[41] Id.

[42] See CIVIL CODE, Art. 1217. The article provides:

Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with interest for payment already made. If payment made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each. (emphasis supplied)

[43] Supra note 4.

[44] Id.

[45] See REVISED PENAL CODE, Art. 43. Prisión correccional - Its accessory penalties. The penalty of prisión correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of the said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

(emphasis supplied)

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.