

JESUS TORRES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 175074. August 31, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the Resolution[1] dated September 6, 2006 and Resolution dated October 17, 2006[2] of the Court of Appeals (CA) in CA-G.R. CR No. 29694.

The factual and procedural antecedents are as follows:

In an Information[3] dated November 15, 1994, petitioner Jesus U. Torres was charged with the crime of Malversation of Public Funds before the Regional Trial Court (RTC), Branch 42, Virac, Catanduanes, the accusatory portion of which reads:

That on or about the 27[th] day of April 1994, or sometime subsequent thereto, in the Municipality of Virac, Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Principal of Viga Rural Development High School, Viga, Catanduanes, and as such by reason of his office and duties is responsible and accountable for public funds entrusted to and received by him, to wit: PNB Checks (sic) Nos. C-983182-Q for P42,033.32; C-983183-Q for P95,680.89; C-983184-Q for P58,940.33, all dated April 26, 1994 in the total amount of ONE HUNDRED NINETY-SIX THOUSAND SIX HUNDRED FIFTY-FOUR PESOS and FIFTY-FOUR CENSTAVOS (P196,654.54), Philippine Currency, representing salaries, salary differentials, additional compensation allowance and Personal Emergency Relief Allowance from January to March 1994 of the employees of the said school, taking advantage of his position and committing the offense in relation to his office, encashed said checks with the Philippine National Bank, Virac, Catanduanes Branch and once in possession of the money, did then and there willfully, unlawfully and feloniously and with grave abuse of confidence, misapply, misappropriate, embezzle and convert to his personal use and benefit the aforementioned amount of money, to the damage and prejudice of the Government.

Contrary to law.

Upon his arraignment, petitioner pleaded not guilty to the crime charged. Consequently, trial on the merits ensued.

Evidence for the Prosecution

[Petitioner] Jesus Torres y Uchi was the principal of Viga Rural Development High School (VRDHS). On April 26, 1994, he directed Edmundo Lazado, the school's collection and disbursing officer, to prepare the checks representing the teachers' and employees' salaries, salary differentials, additional compensation allowance (ACA) and personal emergency relief allowance (PERA) for the months of January to March, 1994. Lazado prepared three (3) checks in the total amount of P196,654.54, all dated April 26, 1994, viz: PNB Check Nos. C-983182-Q for P42,033.32; C-983183-Q for P95,680.89; C-983184-Q for P58,940.33 (Exhs. "A", "B" and "C"). The [petitioner] and Amador Borre, Head Teacher III, signed the three (3) checks (TSN, Aug. 30, 2001, pp. 4-8).

Upon the instruction of the [petitioner], Lazado endorsed the checks and handed them to the accused. It was the custom in the school for Lazado to endorse the checks representing the teachers' salaries and for the accused to encash them at PNB, Virac Branch and deliver the cash to Lazado for distribution to the teachers (Id., pp. 12-17).

The following day, April 27, 1994, the accused encashed the three (3) checks at PNB, Virac Branch but he never returned to the school to deliver the money to Lazado (Id., pp. 8-9).[4]

Evidence for the Defense

The [petitioner] admitted that he encashed the subject checks at PNB, Virac Branch in the morning of April 27, 1994 but instead of going back to the school, he proceeded to the airport and availed of the flight to Manila to seek medical attention for his chest pain. Two (2) days after, around 4:30 o'clock in the morning of April 29, 1994, while he and his nephew were on the road waiting for a ride, three (3) armed men held them up and took his bag containing his personal effects and the proceeds of the subject checks. He reported the incident to the police authorities, but he failed to recover the money (TSN, Nov. 12, 2002, pp. 11-25).[5]

On August 31, 2005, after finding that the prosecution has established all the elements of the offense charged, the RTC rendered a Decision[6] convicting petitioner of the crime of Malversation of Public Funds, the decretal portion of which reads:

WHEREFORE, the Court finds the accused Jesus Torres y Uchi GUILTY beyond reasonable doubt of the crime of malversation of public funds as defined and penalized under Article 217 of the Revised Penal Code, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from 12 years and 1 day of reclusion temporal, as minimum, and to 18 years, 8 months and 1 day of reclusion temporal, as maximum; to suffer the penalty of perpetual special disqualification; and to pay the fine of P196,654.54 with subsidiary imprisonment in case of insolvency.

SO ORDERED.[7]

On September 8, 2005, petitioner filed his Notice of Appeal,[8] where it was indicated that he was seeking recourse and appealing the decision of the RTC before the Court of Appeals.

On February 10, 2006, petitioner filed a Manifestation and Motion[9] acknowledging that he filed the appeal before the wrong tribunal. Petitioner eventually prayed, among other things, that the case be referred to the Sandiganbayan for appropriate action.

In its Comment[10] filed on June 29, 2006, the Office of the Solicitor General prayed that the appeal be dismissed outright, since transmittal to the proper court, in cases of erroneous modes of appeal, are proscribed.

On September 6, 2006, the CA issued a Resolution dismissing the appeal, the dispositive portion of which reads:

WHEREFORE, pursuant to the provisions of Section 2, Rule 50 of the Rules and Section 4 of SC Circular No. 2-90, the instant appeal hereby is DISMISSED OUTRIGHT for lack of jurisdiction.

SO ORDERED.[11]

Petitioner filed a Motion for Reconsideration,[12] but was denied in the Resolution[13] dated October 17, 2006.

Hence, the petition raising the sole error:

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITIONER'S APPEAL OUTRIGHT INSTEAD OF CERTIFYING THE CASE TO THE PROPER COURT.[14]

Petitioner maintains that he inadvertently filed the notice of appeal before the Court of Appeals instead of the

Sandiganbayan. Petitioner implores that the Court exercise its sound discretion and prerogative to relax compliance to sound procedural rules and to decide the case on the merits, considering that from the beginning, he has been candid and straightforward about the fact that the case was wrongfully filed with the Court of Appeals instead of the Sandiganbayan.

The petition is without merit.

Paragraph 3, Section 4 (c) of Republic Act No. 8249 (RA 8249),^[15] which defined the jurisdiction of the Sandiganbayan, provides:

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.^[16]

Hence, upon his conviction, petitioner's remedy should have been an appeal to the Sandiganbayan. There is nothing in said paragraph which can conceivably justify the filing of petitioner's appeal before the Court of Appeals instead of the Sandiganbayan. Clearly, the Court of Appeals is bereft of any jurisdiction to review the judgment petitioner seeks to appeal.^[17]

It must be emphasized, however, 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,^[18] the relevant portion of which states:

Sec. 2. Dismissal of improper appeal to the Court of Appeals. - 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.^[19]

In the case at bar, petitioner sought correction of the error in filing the appeal way beyond the expiration of the period to appeal the decision. The RTC promulgated its Decision on August 31, 2005. Petitioner filed his Notice of Appeal on September 8, 2005. Petitioner tried to correct the error only on February 10, 2006 when he filed his Manifestation and Motion. Clearly, this is beyond the 15-day period to appeal from the decision of the trial court. Therefore, the CA did not commit any reversible error when it dismissed petitioner's appeal for lack of jurisdiction.

Besides, even if we look into the merits of his arguments, the case is doomed to fail. Contrary to petitioner's argument, We find that he is an accountable officer within the contemplation of Article 217^[20] of the Revised Penal Code, hence, is untenable.

An accountable public officer, within the purview of Article 217 of the Revised Penal Code, is one who has custody or control of public funds or property by reason of the duties of his office.^[21] The nature of the duties of the public officer or employee, the fact that as part of his duties he received public money for which he is bound to account and failed to account for it, is the factor which determines whether or not malversation is committed by the accused public officer or employee. Hence, a school principal of a public high school, such as petitioner, may be held guilty of malversation if he or she is entrusted with public funds and misappropriates the same.

Petitioner also posits that he could not be convicted under the allegations in the Information without violating his constitutional right to be informed of the accusations against him. He maintains that the Information clearly charged him with intentional malversation and not malversation through negligence, which was the actual nature

of malversation for which he was convicted by the trial court. This too lacks merit.

Malversation may be committed either through a positive act of misappropriation of public funds or property, or passively through negligence.[22] To sustain a charge of malversation, there must either be criminal intent or criminal negligence, and while the prevailing facts of a case may not show that deceit attended the commission of the offense, it will not preclude the reception of evidence to prove the existence of negligence because both are equally punishable under Article 217 of the Revised Penal Code.[23]

More in point, the felony involves breach of public trust, and whether it is committed through deceit or negligence, the law makes it punishable and prescribes a uniform penalty therefor. Even when the Information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves the mode of commission of the offense.[24] Explicitly stated -

x x x [E]ven on the putative assumption that the evidence against petitioner yielded a case of malversation by negligence, but the information was for intentional malversation, under the circumstances of this case, his conviction under the first mode of misappropriation would still be in order. Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from mode proved, the same offense of malversation is involved and conviction thereof is proper. x x x[25]

WHEREFORE, premises considered, the petition is DENIED. The Resolutions dated September 6, 2006 and October 17, 2006 of the Court of Appeals in CA-G.R. CR No. 29694 are AFFIRMED.

SO ORDERED.

Abad, Mendoza, and Sereno,[*] JJ., concur.

Velasco, Jr., J., (Chairperson), please see separate concurring opinion.

[*] Designated as an additional member per Special Order No. 1028 dated June 21, 2011.

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Jose Catral Mendoza (now a member of this Court) and Sesinando E. Villon, concurring; rollo, pp. 41-42.

[2] Id. at 47-48.

[3] Id. at 24-25.

[4] Id. at 27-28.

[5] Id. at 28.

[6] Id. at 26-32.

[7] Id. at 32.

[8] Id. at 33.

[9] Id. 34-36.

[10] Id. at 37-39.

[11] Id. at 42.

[12] Id. at 43-45.

[13] *Id.* at 47-48.

[14] *Id.* at 15.

[15] Entitled An Act Further Defining The Jurisdiction Of The Sandiganbayan, Amending For The Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, And For Other Purposes. Approved on February 5, 1997.

[16] Emphasis ours.

[17] *Balaba v. People*, G.R. No. 169519, July 17, 2009, 593 SCRA 210, 214.

[18] *Melencion v. Sandiganbayan*, G.R. No. 150684, June 12, 2008, 554 SCRA 345, 353; *Moll v. Buban*, 436 Phil. 627, 639 (2002). See also *Balaba v. People*, *supra* note 17, at 215.

[19] (Emphasis supplied.)

[20] 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, 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 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 use.

[21] *Alejo v. People*, G.R. No. 173360, March 28, 2008, 550 SCRA 326, 340.

[22] See *People v. Ting Lan Uy, Jr.*, 511 Phil. 682, 691 (2005).

[23] *Id.*

[24] *Id.* at 691-692, citing *Diaz v. Sandiganbayan*, 361 Phil. 789, 802-803 (1999).

[25] *Cabello v. Sandiganbayan*, 274 Phil. 369 (1991).

SEPARATE CONCURRING OPINION

VELASCO, JR., J.:

I concur in the result that the petition is rejected and the September 6, 2006 and October 17, 2006 Resolutions of the Court of Appeals (CA) are upheld. While the ponencia declined the supplication of petitioner that his appeal to the Sandiganbayan be given due course, the ponencia nevertheless impliedly granted the entreaty by delving on the merits of the appealed conviction. I fully agree with the ponencia that petitioner is guilty of malversation as he is an accountable officer under Article 217 of the Revised Penal Code. As a school principal of a public high school, petitioner is liable for malversation if he is entrusted with public funds and misappropriates them.

The ponencia is correct in turning down the argument of petitioner that his erroneous appeal to the CA should not be dismissed outright but referred to the proper court which is the Sandiganbayan. This is in line with Our ruling in *Melencion v. Sandiganbayan*,^[1] *Moll v. Buban*,^[2] and others that an appeal erroneously taken to the CA shall not be transferred to the appropriate court (in this case, the Sandiganbayan) but shall be dismissed outright pursuant to Section 2, Rule 50 of the Rules of Court.

It is my opinion, however, that while the erroneous appeal of petitioner can be dismissed as a matter of course, I find that the facts and circumstances justify the relaxation and suspension of Our Rules of Court for compelling reasons of equity and substantive justice. The records reveal that petitioner has no financial resources to hire a *de parte* lawyer and resorted to seeking legal representation from the Public Attorney's Office (PAO) in Virac, Catanduanes. The PAO lawyer assigned to his case bungled his job and filed a Notice of Appeal to the CA when it should have been directed to the proper court--the Sandiganbayan. The PAO central, upon being apprised of the error, lost no time in seeking the referral of the case to the Sandiganbayan, but, unfortunately, the appeal period has lapsed. While it is the general rule that a party-litigant is bound by the mistake or negligence of his counsel, in the case at bar, I conclude that there was gross mistake or irresponsibility on the part of the PAO lawyer.

In *Aguilar v. Court of Appeals*,^[3] the Court granted relief to the hapless accused by reopening the case to give him another chance to adduce evidence, thus:

[An accused's] right to appeal should not be lost through technicalities. His liberty is at stake. x x x If he has to spend x x x long stretch in prison, his guilt must be established beyond reasonable doubt. He cannot lose his liberty because of the gross irresponsibility of his lawyer. Losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer. The established jurisprudence holds:

x x x

"The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rules, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.

x x x

The court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.

x x x

If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result

thereof is so serious that the client, who otherwise has a good case, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. x x x"

By analogy, it is my view that the Court should have remanded the instant case to the Sandiganbayan and ordered petitioner's appeal to be given due course. The PAO lawyer, who was assigned to the case of petitioner, is assumed to have handled hundreds of cases for indigent litigants and should already be familiar with the exclusive appellate jurisdiction of the Sandiganbayan over final judgments, resolutions or orders of the regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided pursuant to par. 3, Sec. 4(c) of Republic Act No. 8249. Apparently, he was not. Under the circumstances of the case, the Court could have suspended the rules and accorded petitioner his right to appeal his conviction to the Sandiganbayan.

Where one's liberty is at stake, it is fitting, but on a case-to-case-basis, that a window for redress should be opened for the accused especially in cases where the accused who is ordinarily unfamiliar with the rules of procedure is prejudiced by the gross mistake or negligence of his counsel. The deprivation of an accused of liberty and/or property should certainly receive the liberal application of the Rules of Court to attain justice and fairness.

I vote to dismiss the petition.

[1] G.R. No. 150684, June 12, 2008, 554 SCRA 345.

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

[3] G.R. No. 114282, November 28, 1995, 250 SCRA 371, 374-375.

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