

CECILIA U. LEGRAMA, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 178626. June 13, 2012

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari assailing the Decision[1] dated January 30, 2007 of the Sandiganbayan in Criminal Case No. 25204 finding petitioner guilty of the crime of Malversation of Public Funds, and the Resolution[2] dated May 30, 2007 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

On September 5, 1996, the Office of the Provincial Auditor of the Commission on Audit (COA) for the Province of Zambales issued PAO Office No. 96-09[3] directing an Audit Team composed of State Auditor 1 Virginia D. Bulalacao, State Auditor 1 Teresita Cayabyab and Auditing Examiner II Lourdes Castillo, to conduct an examination of the cash and account of petitioner Cecilia Legrama, the Municipal Treasurer of the Municipality of San Antonio, Zambales.

After the audit, the COA prepared a Special Cash Examination Report on the Cash and Accounts of Ms. Cecilia U. Legrama[4] dated October 1, 1996. The report contained the findings that petitioner's cash accountability was short of P289,022.75 and that there was an unaccounted Internal Revenue Allotment (IRA) in the amount of P863,878.00, thereby showing a total shortage in the amount of P1,152,900.75. Included in the shortage is the amount of P709,462.80, representing the total amount of various sales invoices, chits, vales, and disbursement vouchers,[5] which were disallowed in the audit for lack of supporting documents. From the total amount of the shortage, petitioner was able to reconstitute the initial amount of P60,000.00,[6]

Consequently, petitioner and Romeo D. Lonzanida (Lonzanida), the Municipal Mayor of San Antonio, Zambales at the time the audit was conducted, were charged in an Information[7] dated December 15, 1998 with the crime of Malversation of Public Funds. The accusatory portion of which reads:

That on or about October 1, 1996 and for sometime prior or subsequent thereto, in the Municipality of San Antonio, Province of Zambales, Philippines and within the jurisdiction of this Honorable tribunal, the above named accused ROMEO D. LONZANIDA, being then Municipal Mayor of San Antonio, Zambales, in connivance and conspiracy with co-accused CECILIA U. LEGRAMA, being then Municipal Treasurer of San Antonio, Zambales, who, as such, is accountable for public funds received and/or entrusted to her by reason of her office, both, while in the performance of their respective official functions, taking advantage of their official positions, and committing the offense in relation to their respective functions, did then and there, wilfully, unlawfully, feloniously and with grave abuse of confidence, take, misappropriate and convert to their personal use and benefit, the amount of P1,152,900.75[8] from such public funds, to the damage of the government, in the aforesaid amount.

CONTRARY TO LAW.

Both petitioner and Lonzanida voluntarily surrendered and posted their respective cash bonds.

Upon arraignment, petitioner and Lonzanida pleaded not guilty to the offense charged; hence, trial on the merits ensued.

To establish its case, the prosecution presented the testimony of the Audit Team leader, Virginia D. Bulalacao. On the other hand, the defense presented both the testimonies of petitioner and Lonzanida. After the parties have submitted their respective pleadings and evidence, the Sandiganbayan rendered a Decision[9] acquitting Lonzanida. However, the tribunal concluded that petitioner malversed the total amount of P1,131,595.05 and found her guilty of the crime of Malversation of Public Funds and sentenced her accordingly the dispositive portion of the Decision reads:

WHEREFORE, premises considered, for failure of the prosecution to prove his guilt beyond reasonable doubt, accused ROMEO D. LONZANIDA, is hereby acquitted of the instant crime charged.

The Hold Departure Order issued against him is hereby ordered lifted. The cash bond which he posted to obtain his provisional liberty is hereby ordered returned to him subject to the usual auditing and accounting procedures.

Accused CECILIA U. LEGRAMA is hereby declared guilty beyond reasonable doubt of the crime of Malversation of Public Funds.

The amount involved in the instant case is more than Php22,000.00. Hence, pursuant to the provisions of Article 217 of the Revised Penal Code, the penalty to be imposed is reclusion temporal in its maximum period to reclusion perpetua.

Considering the absence of any aggravating circumstance and the presence of two mitigating circumstances, viz., accused Legrama's voluntary surrender and partial restitution of the amount involved in the instant case, and being entitled to the provisions of the Indeterminate Sentence Law, she is hereby sentenced to suffer an indeterminate penalty of 4 years, 2 months and 1 day of prision correccional, as minimum, to 10 years and 1 day of prision mayor, as maximum.

Further, she is ordered to pay the amount of Php299,204.65, representing the balance of her incurred shortage after deducting therein the restituted amount of Php832,390.40 and the Php200.00 covered by an Official Receipt dated August 18, 1996 issued in the name of the Municipality of San Antonio (Exhibit "22"). She is also ordered to pay a fine equal to the amount malversed which is Php1,131,595.05 and likewise suffer the penalty of perpetual special disqualification and to pay costs.

SO ORDERED.[10]

In convicting petitioner of the crime charged against her, the Sandiganbayan concluded that the prosecution established all the elements of the crime of malversation of public funds. Although petitioner was able to reconstitute the total amount of P832,390.40,[11] petitioner failed to properly explain or justify the shortage in her accountability. However, the same conclusion against petitioner's co-accused was not arrived at by the court, considering that there was no evidence presented to prove that he conspired with the petitioner in committing the crime charged.

Petitioner filed a Motion for Reconsideration,[12] but it was denied in the Resolution[13] dated May 30, 2007.

Hence, the petition assigning the following errors:

I.

THE HONORABLE SANDIGANBAYAN ERRED AND GRAVELY ABUSED ITS DISCRETION IN

CONVICTING THE ACCUSED CECILIA U. LEGRAMA BEYOND REASONABLE DOUBT OF THE CRIME OF MALVERSATION AND IN DIRECTING THE ACCUSED TO PAY THE AMOUNT OF PHP299,204.65 AND A FINE EQUAL TO THE AMOUNT MALVERSED WHICH IS PHP1,131,595.05.

II.

THE HONORABLE SANDIGANBAYAN ERRED AND GRAVELY ABUSED ITS DISCRETION IN CONVICTING THE ACCUSED CECILIA U. LEGRAMA BEYOND REASONABLE DOUBT OF THE CRIME OF MALVERSATION IN NOT FINDING THAT SHE SUCCEEDED TO OVERTHROW THE PRIMA FACIE EVIDENCE OF CONVERSION/MISAPPROPRIATION UNDER ARTICLE 217 OF THE REVISED PENAL CODE AND IN REJECTING HER EXPLANATION AS REGARDS THE VOUCHERS AND “VALE.”[14]

Petitioner argues that the Sandiganbayan failed to consider the testimonial and documentary exhibits presented to support her claim that she did not appropriate or misappropriate for her use and benefit the subject fund nor did she allow her co-accused to use the said fund without the proper acknowledgment such as receipts, vales or sign chits. Petitioner maintains that she has satisfactorily explained the shortage on the basis of the documentary evidence submitted.

As for her failure to make the necessary liquidation of the amount involved, petitioner posits that this is not attributable to her, considering that before she could make the proper liquidation, she was already relieved from duty and was prevented by the COA team from entering her office.

On its part, respondent maintains that petitioner’s failure to account for the shortage after she was demanded to do so is prima facie proof that she converted the missing funds to her personal use. It insists that the prosecution has sufficiently adduced evidence showing that all the elements of the crime of Malversation of public funds are present in the instant case and that it was proper for the Sandiganbayan to convict her of the crime charged.

The petition is bereft of merit.

Malversation of public funds is defined and penalized in 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:

1. The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed 200 pesos.
2. The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 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 6,000 pesos but is less than 12,000 pesos.
4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 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.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.[15] The essential elements common to all acts of malversation under Article 217 of the Revised Penal Code are:

(a)

That the offender be a public officer;

(b)

That he had the custody or control of funds or property by reason of the duties of his office;

(c)

That those funds or property were public funds or property for which he was accountable; and

(d)

That he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.

More importantly, in malversation of public funds, the prosecution is burdened to prove beyond reasonable doubt, either by direct or circumstantial evidence, that the public officer appropriated, misappropriated or consented, or through abandonment or negligence, permitted another person to take public property or public funds under his custody. Absent such evidence, the public officer cannot be held criminally liable for malversation. Mere absence of funds is not sufficient proof of conversion; neither is the mere failure of the public officer to turn over the funds at any given time sufficient to make even the prima facie case. In fine, conversion must be proved. However, an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his account which he is unable to explain.[16]

Under Article 217, a presumption was installed that upon demand by any duly authorized officer, the failure of a public officer to have duly forthcoming any public funds or property – with which said officer is accountable – should be prima facie evidence that he had put such missing funds or properties to personal use. When these circumstances are present, a “presumption of law” arises that there was malversation of public funds or properties as decreed by Article 217.[17] To be sure, this presumption is disputable and rebuttable by evidence showing that the public officer had fully accounted for the alleged cash shortage.

In the case at bar, after the government auditors discovered the shortage and informed petitioner of the same,[18] petitioner failed to properly explain or justify the shortage that was subject to her accountability. Petitioner denied that she put the amount involved to personal use and presented various sales invoice, chits, vale forms, and disbursement voucher to prove her claim.[19] Petitioner even went further by testifying that the total amount of P681,000.00 appearing in a disbursement voucher[20] were cash advances given to the mayor during the height of the Mt. Pinatubo eruption. However, the date when the eruption occurred was way before the period subject of the audit. As aptly found by the court a quo:

This Court takes judicial notice that the Mt. Pinatubo erupted in June 1991, and has not erupted again up to the

present. As stated earlier, the COA audit conducted on the account of accused Legrama covers the financial transactions of the municipality from June 24, 1996 to September 4, 1996. Therefore, the said cash advances, which accused Legrama confirmed were given to accused Lonzanida “during the height of the Mt. Pinatubo eruption,” which occurred five years before the subject audit, are not expenses of the municipality during the period of audit covered in the instant case. As it is, it has been disallowed by the COA for lack of necessary supporting papers. Even if the said disbursement voucher had been completely accomplished, and granting that all the necessary supporting documents had been attached thereto, it would nonetheless be disallowed because it covers a transaction which is not subject of the audit.[21]

x x x x

In her defense, accused Legrama testified that except for the expenses she incurred for her official travels, she did not put the amount involved in the instant case to personal use. As proof of her claim, she produced and painstakingly identified in open court each and every sales invoice, chit, vale and the disbursement voucher which are likewise the evidence of the prosecution marked as Exhibits “B-3” to “B-3NN” (Exhibits “1” to “1-NN”) and in addition, presented various sales invoice, chit and vale form marked as Exhibits “3” to “72,” all in the total amount of Php1,169,099.22, an amount more than what is involved in the instant indictment.[22]

To reiterate, the subject of the audit from which the instant case stemmed from are financial transactions of the municipality from June 24, 1996 to September 4, 1996. Therefore, official receipts, chits or vales, even if they are in the name of the municipality, but nonetheless issued to it for transactions as far back as the year 1991 are immaterial to the instant case. It is sad and even deplorable that accused Legrama, in an attempt to extricate herself from liability, tried to deceive this Court in this manner. Having obtained a degree in Bachelor of Science Major in Accounting and being the municipal treasurer for eight (8) years, accused Legrama is presumed to be aware that she knowingly attempted to deceive this Court.[23]

Undoubtedly, all the elements of the crime are present in the case at bar. First, it is undisputed that petitioner was the municipal treasurer at the time material to this case. Second, it is the inherent function of petitioner, being the municipal treasurer, to take custody of and exercise proper management of the local government’s funds. Third, the parties have stipulated during the pre-trial of the case that petitioner received the subject amount as public funds[24] and that petitioner is accountable for the same.[25] Fourth, petitioner failed to rebut the prima facie presumption that she has put such missing funds to her personal use.

Verily, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that he failed to account for the said funds upon demand without offering sufficient explanation why there was a shortage. In fine, petitioner’s failure to present competent and credible evidence that would exculpate her and rebut the prima facie presumption of malversation clearly warranted a verdict of conviction.

As for the appropriate penalty, since the amount involved is more than P22,000.00, pursuant to the provisions of Article 217 of the Revised Penal Code, the penalty to be imposed is reclusion temporal in its maximum period to reclusion perpetua.

However, as aptly concluded by the Sandiganbayan, petitioner enjoys the mitigating circumstances of voluntary surrender and restitution. Although restitution is akin to voluntary surrender,[26] as provided for in paragraph 7[27] of Article 13, in relation to paragraph 10[28] of the same Article of the Revised Penal Code, restitution should be treated as a separate mitigating circumstance in favor of the accused when the two circumstances are present in a case, which is similar to instances where voluntary surrender and plea of guilty are both present even though the two mitigating circumstances are treated in the same paragraph 7, Article 13 of the Revised Penal Code.[29] Considering that restitution is also tantamount to an admission of guilt on the part of the accused, it was proper for the Sandiganbayan to have considered it as a separate mitigating circumstance in favor of petitioner.

Taking into consideration the absence of any aggravating circumstance and the presence of two mitigating circumstance, i.e., petitioner's voluntary surrender and partial restitution of the amount malversed,[30] the prescribed penalty is reduced to prision mayor in its maximum period to reclusion temporal in its medium period, which has a range of ten (10) years and one (1) day to seventeen (17) years and four (4) months. In accordance with paragraph 1, Article 64 of the Revised Penal Code[31] and considering that there are no other mitigating circumstance present, the maximum term should now be the medium period of prision mayor maximum to reclusion temporal medium, which is reclusion temporal minimum and applying the Indeterminate Sentence Law, the minimum term should be anywhere within the period of prision correccional maximum to prision mayor medium. Hence, the penalty imposed needs modification. Accordingly, petitioner is sentenced to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal, as maximum.

WHEREFORE, premises considered, the petition is DENIED. The Decision dated January 30, 2007 and the Resolution dated May 30, 2007 of the Sandiganbayan are AFFIRMED with MODIFICATION. Petitioner is hereby sentenced to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum term, to twelve (12) years, five (5) months and eleven (11) days of reclusion temporal, as maximum term.

SO ORDERED.

Abad, Villarama, Jr.,[**] Mendoza, and Perlas-Bernabe, JJ., concur.
Peralta, J., (Acting Chairperson),[*]

[*] Per Special Order No. 228 dated June 6, 2012.

[**] Designated as Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 1229 dated June 6, 2012.

[1] Penned by Associate Justice Ma. Cristina G. Cortez-Estrada, with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring; rollo, pp. 20-62.

[2] Id. at 64-66.

[3] Records, Vol. I, p. 252.

[4] Id. at 140-250.

[5] Id. at 190-230.

[6] Id. at 248.

[7] Id. at 1-2.

[8] See rollo, p. 21.

[9] Id. at 20-63.

[10] Id. at 61-62.

[11] Id. at 31.

[12] Records, Vol. II, pp. 463-472.

[13] Rollo, pp. 64-66.

[14] Id. at 8-9.

[15] *Pondevida v. Sandiganbayan*, G.R. Nos. 160929-31, August 16, 2005, 467 SCRA 219, 241-242.

[16] Id. at 242-243.

[17] *Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429, 437.

[18] Records, Vol. I, pp. 250-251.

[19] Id. at 190-230.

[20] Id. at 230.

[21] Rollo, pp. 56-57.

[22] Id. at 58.

[23] Id. at 59.

[24] Records, Vol. I, p. 57.

[25] Section 340 of the Local Government Code reads:

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 officers who, 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.

[26] *Navarro v. Meneses III*, CBD Adm. Case No. 313, January 30, 1998, 285 SCRA 586, 594.

[27] Art 13. Mitigating circumstances. — The following are mitigating circumstances:

x x x x

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

[28] Art 13. Mitigating circumstances. — The following are mitigating circumstances:

x x x x

10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

[29] *Supra* note 27.

[30] See *Perez v. People*, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 566; also *Duero v. People*, G.R. No. 162212, January 30, 2007, 513 SCRA 389.

[31] Article 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

x x x x.

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