

MARINO B. ICDANG, PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 185960. January 25, 2012

Ponente: VILLARAMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-185960/>

VILLARAMA, JR., J.:

Before us is a petition for certiorari under Rule 65 seeking to reverse and set aside the Decision[1] dated May 26, 2008 and Resolution[2] dated November 18, 2008 of the Sandiganbayan (SB) (Second Division) which convicted petitioner of the crime of malversation of public funds.

The factual antecedents:

Petitioner Marino B. Icdang, at the time of the transactions subject of this controversy, was the Regional Director of the Office for Southern Cultural Communities (OSCC) Region XII in Cotabato City.

On January 19, 1998, a Special Audit Team was formed by the Commission on Audit (COA) Regional Office XII, Cotabato City pursuant to COA Regional Office Order No. 98-10[3] to conduct comprehensive audit on the 1996 funds for livelihood projects of the OSCC-Region XII. Hadji Rashid A. Mudag was designated as team leader, with Jose Mercado, Myrla Fermin and Evelyn Macala as members.

In its report submitted to the COA Regional Director, the audit team noted that petitioner was granted cash advances which remained unliquidated. In the cash examination conducted by the team on March 10, 1998, it was discovered that petitioner had a shortage of P219,392.75. Out of the total amount of P920,933.00 released in September 1996 to their office under sub-allotment advice No. COT-043, to cover the implementation of various socio-economic projects for the cultural communities of the region, cash advances amounting to P407,000.00 were granted from October 1, 1996 to February 5, 1997 to officials and employees including petitioner. Per records, it was noted that P297,392.75 of these cash advances remained unliquidated as of December 31, 1997.[4]

Petitioner never denied that he received a total of P196,000.00 evidenced by disbursement vouchers and checks payable to him, as follows:

DV No.

Check No.

Date

Purpose

Amount

0988

893433

10/01/96

Initial funding for the Ancestral Domain Development Program

P50,000.00

0989

893432

10/01/96

Establishment of ICC- IAD

50,000.00

1150

916539

11/05/96

Support to Cooperative

6,000.00

0987

893429

10/01/96

Adult Literacy Program

60,000.00

0986

893430

10/01/96

Child Care Development Program

30,000.00[5]

In addition, per the Schedule of Cash Advance Intended for Livelihood Projects,[6] the following amounts were also for petitioner's account:

Check No.

Date

Purpose

Amount

x x x x

893633

11/15/96

Operationalization of Tribal Cooperative

11,000.00

893768

12/13/96

Fishpen Development Program

10,000.00

893788

12/20/96

Operationalization of Tribal Cooperative

5,000.00

916634

02/05/97

Ancestral Domain Development Program

10,000.00

[TOTAL CASH ADVANCES -

P]232,000.00

In the Audit Observation Memorandum No. 97-001 (March 18, 1998) sent by the COA Region XII to the OSCC-Region XII reflecting the findings of the Special Audit Team, it was also disclosed that: (1) Funds intended for programs for Ancestral Domain Claim Development and to support tribal cooperatives, were cash advanced, but the proposed projects were not implemented by the OSCC-Region XII; (2) No official cashbooks are maintained to record cash advances and disbursements from the 1996 funds allocated for livelihood projects; and (3) Out of the total P920,933.00 allocated for 1996 livelihood projects, the amount of P445,892.80 was disbursed leaving a balance of P475,040.20; however, final trial balance as of December 31, 1996 showed that the office has exhausted the allocated funds for the whole year; the utilization of the P475,040.20 could not be explained by the Accountant so that it may be concluded that such was misappropriated. Petitioner indicated his comments on the said memorandum by requesting for extension to reconstitute the amount of P306,412.75 (which included the P67,000.00 cash shortage of another OSCC-Region XII official, Ma. Teresa A. Somorostro), and explaining that the P475,040.20 was not misappropriated as evidenced by their own financial report and re-statement of allotment and obligation for the month ending December 31, 1996.[7]

From the field interviews conducted by the audit team, it was also gathered that the intended projects covered by the cash advances were never implemented, such as the proposed Children Development Project in Bgy. Matila; adult literacy program in Cotabato; operationalization of tribal cooperative in Bgy. Bantagan, Sultan Kudarat; and establishment of ICC-IAD in Magpet, Cotabato where a complaint was made to the effect that the OSCC-Region XII office allegedly upon receipt of funds prepares a project for implementation which is different from that project proposal submitted by the project officer. Supposedly, there was likewise no support or assistance given by the OSCC-Region XII to the activities of the Provincial Special Task Force on Ancestral Domain for the indigenous people of Columbio, Sultan Kudarat, and to Bgys. Salumping, Municipality of Esperanza, President Roxas, and Matrilala.[8] And as already mentioned, the audit team discovered that the accountable officers of OSCC-Region XII failed to maintain the official cashbook so that there were no recording of transactions whenever a cash advance was granted; only subsidiary ledgers were used by the accounting section.

From the P232,000.00 accountabilities of petitioner, the COA deducted the following: P10,000.00 covered by acknowledgment receipt by A. Anas; various cash invoices in the amount of P2,197.25; and Reimbursement Expense Receipts (RERs) in the amount of P410.00. After the cash examination, petitioner was still found short of P219,392.75.[9] Consequently, a demand letter was sent by the COA for petitioner to immediately produce the missing funds. In his letter-reply dated March 19, 1998, petitioner requested for one-week extension to comply with the directive.[10]

However, the one-week period lapsed without compliance having been made by petitioner. Hence, the audit team recommended the initiation of administrative and criminal charges against him, as well as Ms. Somorostro, Chief of the Socio-Cultural Development Concerns Division of OSCC-Region XII.

On September 21, 2000, the Office of the Ombudsman found probable cause against petitioner and Ms. Somorostro for violation of Art. 217 of the Revised Penal Code, as amended, and Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).

The Amended Information charging petitioner with the crime of Malversation of Public Funds (Criminal Case No. 26327) reads:

That during the period from October 1996 to February 1997 in Cotabato City, Philippines and within the jurisdiction of this Honorable Court, accused Marino B. Icdang, a public officer being then the Regional

Director of the Office for Southern Communities (OSCC), Region XII, Cotabato City and as such is accountable officer for the public fund received by him that were intended for the socio-economic and cultural development projects of the OSCC Region XII, did then and there willfully, unlawfully and feloniously take[,] misappropriate, embezzle and convert for his own personal use and benefit from the said fund the aggregate amount of TWO HUNDRED NINETEEN THOUSAND THREE HUNDRED NINETY-TWO PESOS AND 75/100 (P219,392.75) to the damage and prejudice of the government in the aforesaid sum.

CONTRARY TO LAW.[11]

Petitioner was likewise charged with violation of Section 3(e) of R.A. No. 3019 (Criminal Case No. 26328). The lone witness for the prosecution was Hadji Rashid A. Mudag, State Auditor IV of COA Region XII. He presented vouchers which they were able to gather during the cash examination conducted on March 10, 1998, which showed cash advances granted to petitioner, and in addition other cash advances also received by petitioner for which he remained accountable, duly certified by the Accountant of OSCC-Region XII. Petitioner was notified of the cash shortage through the Audit Observation Memorandum No. 97-001 dated March 18, 1998 and was sent a demand letter after failing to account for the missing funds totalling P219,392.75.[12]

On cross-examination, witness Mudag admitted that while they secured written and signed certifications from project officers and other individuals during the field interviews, these were not made under oath. The reports from Sultan Kudarat were just submitted to him by his team members as he was not present during the actual interviews; he had gone only to Kidapawan, Cotabato and only prepared the audit report. He also admitted that they no longer visited the project sites after being told by the project officers that there was nothing to be inspected because no project was implemented.[13]

On May 26, 2008, the SB's Second Division rendered its decision convicting petitioner of malversation and acquitting him from violation of Section 3(e) of R.A. No. 3019. The dispositive portion reads:

WHEREFORE, premises considered judgment is hereby rendered finding accused MARINO B. ICDANG Guilty beyond reasonable doubt of Malversation of Public Funds or Property in Criminal Case No. 26327 and finding in his favor the mitigating circumstance of voluntary surrender, is hereby sentenced to an indeterminate penalty of, considering the amount involved, TEN (10) YEARS and ONE (1) DAY of PRISION MAYOR as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal as maximum, to suffer the penalty of perpetual special disqualification, and to pay a fine of P196,000.00 without subsidiary imprisonment in case of insolvency. He is also ordered to reimburse the government of the said amount.

In Criminal Case No. 26328, he is hereby ACQUITTED on the basis of reasonable doubt.

With cost against accused.

SO ORDERED.[14]

The SB ruled that the prosecution has established the guilt of petitioner beyond reasonable doubt for the crime of malversation of public funds, the presumption from his failure to account for the cash shortage in the amount of P232,000.00 remains un rebutted. As to the reasons given by petitioner for non-compliance with the COA demand, the SB held:

A careful perusal of Mr. Icdang's Letter-Answer dated 19 March 1998 (Exh. "J") to the demand letter and directive issued by the COA clearly shows he was just asking for extension of time to comply with the demand letter. There was virtually no denial on his part that he received the P232,000.00 amount earmarked for the various government projects. His reasons were first, the committee tasked to prepare the liquidation of the cash advances are still in the process of collecting all the documents pertinent to the disbursement of the project

funds; and second, the payees to the disbursements were still to be notified so that they will have to come to the office to affix their signatures as payees to the liquidation vouchers.

This response is queer because as he gave the money to the supposed payees, he should have kept a ledger to keep track of the same, considering that these are public funds. More importantly, Mr. Icdang was given ample opportunity to dispute the COA findings that there was indeed a shortage. Instead of doing so, Mr. Icdang never presented the promised proof of his innocence before this Court during the trial of this case. Thus, the prima facie presumption under Article 217 of the Revised Penal Code, that the failure of a public officer to have duly forthcoming the public funds with which he is chargeable, upon demand, shall be evidence that he put the missing funds for personal uses, arises because first, there was no issue as to the accuracy, correctness and regularity of the audit findings and second, the funds are missing.[15]

Petitioner filed a motion for reconsideration requesting that he be given another chance to present his evidence, stating that his inability to attend the trial were due to financial constraints such that even when some of the scheduled hearings were sometimes held in Davao City and Cebu City, he still failed to attend the same. However, the SB denied the motion noting that the decision has become final and executory on June 10, 2008 for failure of petitioner to file a motion for reconsideration, or new trial, or appeal before that date.

Hence, this petition anchored on the following grounds:

I. THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT RENDERED ITS JUDGMENT OF CONVICTION AGAINST PETITIONER DESPITE ITS KNOWLEDGE THAT PETITIONER WAS NOT ABLE TO ADDUCE HIS EVIDENCE DUE TO VARIOUS CIRCUMSTANCES, THAT HE WAS NOT ASSISTED BY COUNSEL DURING THE PROMULGATION OF JUDGMENT; THE GROSS AND RECKLESS NEGLIGENCE OF HIS FORMER COUNSEL IN FAILING TO ASSIST HIM DURING THE PROMULGATION; HIS FINANCIAL AND ECONOMIC DISLOCATION WHICH MADE HIM UNABLE TO ATTEND THE SCHEDULED TRIALS IN MANILA, DAVAO CITY AND CEBU CITY, HIS RESIDENCE BEING IN COTABATO, WHICH ALL CONSTITUTE A DENIAL OF HIS RIGHT TO BE HEARD AND TO DUE PROCESS.

II. PETITIONER WAS LIKEWISE CLEARLY DENIED OF HIS RIGHT TO DUE PROCESS WHEN DUE TO THE RECKLESS AND GROSS NEGLIGENCE OF HIS FORMER COUNSEL, THE LATTER FAILED TO FILE A MOTION FOR NEW TRIAL TO REVERSE THE JUDGMENT OF CONVICTION BEFORE THE SANDIGANBAYAN OR TO FILE AN APPEAL TO THE SUPREME COURT FROM THE ADVERSE JUDGMENT OF CONVICTION.

III. IT IS HIGHLY UNJUST, INEQUITABLE AND UNCONSCIONABLE FOR PETITIONER TO BE PRESENTLY LANGUISHING IN JAIL WITHOUT HIS DEFENSE AGAINST THE CRIME CHARGED HAVING BEEN PRESENTED BEFORE THE HONORABLE SANDIGANBAYAN AND APPRECIATED BY THE SAID COURT, AND BY THIS HONORABLE SUPREME COURT IN CASE OF APPEAL FROM AN ADVERSE DECISION.

IV. REMAND OF THE INSTANT CASE TO THE COURT OF ORIGIN, OR TO THE HONORABLE SANDIGANBAYAN SO THAT PETITIONER CAN PRESENT HIS EVIDENCE BEFORE SAID COURT, ASSISTED BY NEW COUNSEL, IS PROPER AND JUSTIFIED, ESPECIALLY CONSIDERING THAT THE INSTANT CASE INVOLVES A CRIME OF ALLEGED MALVERSATION OF PUBLIC FUNDS WHICH HE NEVER COMMITTED, AND INVOLVES A HIGHER PENALTY OR TERM OF IMPRISONMENT.[16]

The petition must fail.

At the outset it must be emphasized that the special civil action of certiorari is not the proper remedy to challenge

a judgment conviction rendered by the SB. Petitioner should have filed a petition for review on certiorari under Rule 45.

Pursuant to Section 7 of Presidential Decree No. 1606,[17] as amended by Republic Act No. 8249, decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court. Section 1 of Rule 45 of the Rules of Court provides that “[a] party desiring to appeal by certiorari from a judgment, final order or resolution of the x x x Sandiganbayan x x x whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition x x x shall raise only questions of law, which must be distinctly set forth.” Section 2 of Rule 45 likewise provides that the petition should be filed within the fifteen-day period from notice of the judgment or final order or resolution, or of the denial of petitioner’s motion for reconsideration filed in due time after notice of judgment.

As observed by the SB, the 15-day period of appeal, counted from the date of the promulgation of its decision on May 26, 2008, lapsed on June 10, 2008, which rendered the same final and executory. Petitioner’s motion for reconsideration was thus filed 6 days late. Petitioner’s resort to the present special civil action after failing to appeal within the fifteen-day reglementary period, cannot be done. The special civil action of certiorari cannot be used as a substitute for an appeal which the petitioner already lost.[18]

This Court has often enough reminded members of the bench and bar that a special civil action for certiorari under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. Certiorari is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[19] Appeals though filed late were allowed in some rare cases, but there must be exceptional circumstances to justify the relaxation of the rules.

Petitioner claims that his right to due process was violated when his counsel failed to assist him during the promulgation of the judgment. He faults the Sandiganbayan for proceeding with the promulgation despite the petitioner not then being assisted by his counsel, and being a layman he is not familiar with court processes and procedure.

Section 6, Rule 120 of the Revised Rules of Criminal Procedure, as amended, provides:

SEC. 6. Promulgation of judgment. -- The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at

his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (Emphasis supplied.)

There is nothing in the rules that requires the presence of counsel for the promulgation of the judgment of conviction to be valid. While notice must be served on both accused and his counsel, the latter's absence during the promulgation of judgment would not affect the validity of the promulgation. Indeed, no substantial right of the accused on the merits was prejudiced by such absence of his counsel when the sentence was pronounced.[20]

It is worth mentioning that petitioner never raised issue on the fact that his counsel was not around during the promulgation of the judgment in his motion for reconsideration which merely prayed for reopening of the case to enable him to present liquidation documents and receipts, citing financial constraints as the reason for his failure to attend the scheduled hearings. Before this Court he now submits that the gross negligence of his counsel deprived him of the opportunity to present defense evidence.

Perusing the records, we find that the prosecution made a formal offer of evidence on August 30, 2002. At the scheduled presentation of defense evidence on September 4, 2002, petitioner's counsel, Atty. Manuel E. Iral, called the attention of the SB to the fact that he had just received a copy of said formal offer, and requested for 15 days to submit his comment thereon. The SB granted his request and set the case for hearing on December 2 and 3, 2002.[21] No such comment had been filed by Atty. Iral. On November 18, 2002, due to difficulty in securing a quorum with five existing vacancies in the court, the SB thus reset the hearing to April 21 and 22, 2003.[22] On January 14, 2003, the SB's Second Division issued a resolution admitting Exhibits "A" to "N" after the defense failed to submit any comment to the formal offer of the prosecution, and stating that the previously scheduled hearings on April 21 and 22, 2003 shall proceed.[23] On April 11, 2003, the SB for the same reason again reset the hearing dates to August 11 and 12, 2003.[24]

At the scheduled initial presentation of defense evidence on August 11, 2003, only petitioner appeared informing that when he passed by that morning to his counsel's residence, the latter was ill and thus requested for postponement. Without objection from the prosecution and on condition that Atty. Iral will present a medical certificate within five days, the SB reset the hearing to October 16 and 17, 2003. The SB also said that if by the next hearing petitioner is not yet represented by his counsel, said court shall appoint a counsel de oficio in the person of Atty. Wilfredo C. Andres of the Public Attorney's Office.[25] However, on October 16, 2003, the SB received a letter from petitioner requesting for postponement citing the untimely death of his nephew and swelling of his feet due to arthritis. He assured the court of his attendance in the next hearing it will set at a later date.[26] Accordingly, the SB reset the hearings to February 12 and 13, 2004.[27] On February 4, 2004, the SB again received a letter from petitioner requesting another postponement for medical (arthritis) and financial (lack of funds for attorney's/appearance fee) reasons. He assured the court of his availability after the May 10, 2004 elections.[28] This time, the SB did not grant the request and declared the case submitted for decision on the basis of the evidence on record.[29]

On March 30, 2004, Atty. Iral filed an Urgent Motion for Reconsideration of the February 12, 2004 order submitting the case for decision, citing circumstances beyond his control – the fact that he had no means to come to Manila from Kidapawan, North Cotabato, he being jobless for the past four years. He thus prayed to be allowed to present his evidence on May 17 and 18, 2004.[30] The prosecution opposed said motion, citing two

postponements in which petitioner's counsel have not submitted the required medical certificate and explanation and failure to be present on October 16, 2003.[31]

In the interest of justice, the SB reconsidered its earlier order submitting the case for decision and gave the petitioner a last chance to present his evidence on August 17 to 18, 2004.[32] On August 17, 2004, Atty. Iral appeared but requested that presentation of evidence be postponed to the following day, which request was granted by the SB.[33] The next day, however, only petitioner appeared saying that his lawyer is indisposed. Over the objection of the prosecution and in the supreme interest of justice, the SB cancelled the hearing and rescheduled it to November 15 and 16, 2004. Atty. Iral was directed to submit a verified medical certificate within 10 days under pain of contempt, and the SB likewise appointed a counsel de oficio in the person of Atty. Roberto C. Omandam who was directed to be ready at the scheduled hearing in case petitioner's counsel is not ready, stressing that the court will no longer grant any postponement. Still, petitioner was directed to secure the services of another counsel if Atty. Iral is not available.[34] With the declaration by Malacañang that November 15, 2004 is a special non-working holiday, the hearing was reset to November 16, 2004 as previously scheduled.[35]

On November 16, 2004, Atty. Iral appeared but manifested that he has no witness available. Over the objection of the prosecution, hearing was reset to March 14 and 15, 2005. Atty. Iral agreed to submit the case for decision on the basis of prosecution evidence in the event that he is unable to present any witness on the aforesaid dates.[36] On March 14, 2005, the SB again reset the hearing dates to May 26 and 27, 2005 for lack of material time.[37] However, at the scheduled hearing on May 26, 2005, petitioner manifested to the court that Atty. Iral was rushed to the hospital having suffered a stroke, thereupon the hearing was rescheduled for September 21 and 22, 2005 with a directive for Atty. Iral to submit a verified medical certificate.[38] On September 22, 2005, Atty. Iral appeared but again manifested that he has no witness present in court. On the commitment of Atty. Iral that if by the next hearing he still fails to present their evidence the court shall consider them to have waived such right, the hearing was reset to February 8 and 9, 2006.[39] However, on February 9, 2006, the defense counsel manifested that he has some other commitment in another division of the SB and hence he is constrained to seek cancellation of the hearing. Without objection from the prosecution and considering that the intended witness was petitioner himself, the SB reset the hearing to April 17 and 18, 2006, which dates were later moved to August 7 and 8, 2006.[40] On August 7, 2006, over the objection of the prosecution, the SB granted the motion for postponement by the defense on the ground of lack of financial capacity. The hearing was for the last time reset to October 17 and 18, 2006, which date was later changed to October 11 and 12, 2006.[41]

On October 11, 2006, on motion of the prosecution, the SB resolved that the cases be submitted for decision for failure of the defense to appear and present their evidence, and directed the parties to present their respective memoranda within 30 days.[42] As only the prosecution submitted a memorandum, the SB declared the cases submitted for decision on August 24, 2007.[43] Petitioner and his counsel were duly notified of the promulgation of decision, originally scheduled on February 28, 2008 but was moved to March 27, 2008 in view of the absence of petitioner and the Handling Prosecutor.[44] On that date, however, on motion of Atty. Iral, the promulgation was postponed to April 14, 2008.[45] On April 14, 2008, both petitioner and his counsel failed to appear, but since the notice to petitioner was sent only on April 3, 2008, the SB finally reset the promulgation of judgment to May 26, 2008.[46] While supposedly absent during the promulgation, records showed that Atty. Iral personally received on the same date a copy of the decision.[47]

The foregoing shows that the defense was granted ample opportunity to present their evidence as in fact several postponements were made on account of Atty. Iral's health condition and petitioner's lack of financial resources to cover transportation costs. The SB exercised utmost leniency and compassion and even appointed a counsel de oficio when petitioner cited lack of money to pay for attorney's fee. In those instances when either petitioner or

his counsel was present in court, the following documentary evidence listed during the pre-trial, allegedly in the possession of petitioner, and which he undertook to present at the trial, were never produced in court at any time: (1) Liquidation Report by petitioner; (2) Certification of Accountant Zamba Lajaratu of the National Commission on Indigenous People, Region XII, Cotabato City; and (3) Different Certifications by project officers and barangay captains.[48] If indeed these documents existed, petitioner could have readily submitted them to the court considering the length of time he was given to do so. The fact that not a single document was produced and no witness was produced by the defense in a span of 4 years afforded them by the SB, it can be reasonably inferred that petitioner did not have those evidence in the first place.

The elements of malversation of public funds 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.[49]

There is no dispute on the existence of the first three elements; petitioner admitted having received the cash advances for which he is accountable. As to the element of misappropriation, indeed petitioner failed to rebut the legal presumption that he had misappropriated the said public funds to his personal use, notwithstanding his unsubstantiated claim that he has in his possession liquidation documents. The SB therefore committed neither reversible error nor grave abuse of discretion in convicting the petitioner of malversation for failure to explain or account for his cash shortage by any liquidation or supporting documents. As this Court similarly ruled in one case[50]:

In the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts.

In convicting petitioner, the Sandiganbayan cites the presumption in Article 217, *supra*, of the Revised Penal Code, i.e., 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, is *prima facie* evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if the accused is able to present adequate evidence that can nullify any likelihood that he had put the funds or property to personal use, then that presumption would be at an end and the *prima facie* case is effectively negated. This Court has repeatedly said that when the absence of funds is not due to the personal use thereof by the accused, the presumption is completely destroyed; in fact, the presumption is never deemed to have existed at all. In this case, however, petitioner failed to overcome this *prima facie* evidence of guilt.

There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[51] Under the facts on record, we find no grave abuse of discretion on the part of the SB when it submitted the case for decision and rendered the judgment of conviction on the basis of the prosecution evidence after the defense failed to present its evidence despite ample opportunity to do so.

WHEREFORE, the petition is DISMISSED. The Decision promulgated on May 26, 2008 and Resolution issued on November 18, 2008 by the Sandiganbayan in Criminal Case No. 26327 are AFFIRMED.

With costs against the petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo, pp. 48-63. Penned by Associate Justice Edilberto G. Sandoval with Associate Justices Teresita V. Diaz-Baldos and Samuel R. Martires concurring.

[2] Id. at 64.

[3] Id. at 77.

[4] Id. at 84-85, 91 and 95; Exhibits “A,” “B,” “M” to “M-2,” “N,” Formal Offer of Evidence (Prosecution).

[5] Id. at 95-97, 102-103, 105-106, 108-109 and 111-112.

[6] Id. at 95.

[7] Exhibits “K” and “L,” Formal Offer of Evidence (Prosecution).

[8] Exhibits “D-2” to “D-5,” “E-2,” “F-2,” “G-2” and “H-2,” id.

[9] Exhibit “C,” id.

[10] Exhibits “I” and “J,” id.

[11] Rollo, p. 70.

[12] TSN, May 22, 2002, pp. 5-19.

[13] TSN, July 4, 2002, pp. 30-34.

[14] Rollo, pp. 60-61.

[15] Id. at 58-59.

[16] Id. at 17-18.

[17] Revising Presidential Decree No. 1486 Creating a Special Court to be Known as “Sandiganbayan” and for Other Purposes.

[18] People v. Sandiganbayan, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216.

[19] Id.

[20] See Jamilano v. Cuevas, No. L-33654, July 23, 1987, 152 SCRA 158, 161-162, citing U.S. v. Gimeno, 3 Phil. 233, 234.

[21] SB records (Crim. Case No. 26327), p. 242.

[22] Id. at 250.

[23] Id. at 259.

- [24] Id. at 265.
- [25] Id. at 273.
- [26] Id. at 282-287.
- [27] Id. at 294-296.
- [28] Id. at 297.
- [29] Id. at 298.
- [30] Id. at 304.
- [31] Id. at 309-311.
- [32] Id. at 313.
- [33] Id. at 320.
- [34] Id. at 322.
- [35] Id. at 328.
- [36] Id. at 330.
- [37] Id. at 340.
- [38] Id. at 346-A.
- [39] Id. at 362.
- [40] Id. at 370, 377.
- [41] Id. at 382, 386.
- [42] Id. at 391.
- [43] Id. at 441.
- [44] Id. at 450.
- [45] Id. at 458.
- [46] Id. at 466.
- [47] Id. at 489 (back).
- [48] Rollo, p. 75.
- [49] Ocampo III v. People, G.R. Nos. 156547-51, February 4, 2008, 543 SCRA 487, 505-506.
- [50] Davalos, Sr. v. People, G.R. No. 145229, April 24, 2006, 488 SCRA 84, 92-93.
- [51] People v. Sandiganbayan, *supra* note 18, at 218.

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.