

RICARDO ROXAS, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 50310. September 25, 1987*

Ponente: NARVASA, J.

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At the time of the incidents leading up to his prosecution and conviction in the case subject of the present appeal petitioner Ricardo Roxas was the acting postmaster of the barrio of Musuan in the Municipality of Maramag, Bukidnon. Before that, he had been a mere postal clerk in the Cagayan de Oro City Post Office, a college undergraduate with no experience about the work of a postmaster whose functions to a major extent, involve the keeping receipt and disbursement of public funds for which he is accountable. It may thus be fairly presumed that Roxas was given that assignment because no one more qualified was available or willing to take it.

The Musuan post office was at the time a one-man affair serving a population of 4,000 which included 3,000 students of the College of Agriculture situated in that barrio; whoever was postmaster had no one to help or assist him.[1] Giving the job to Roxas under such circumstances was borrowing trouble and, indeed, trouble was not long in coming. On September 22, 1958, barely three months into his new assignment, Roxas' accounts were examined by Vicente Moncada an auditing clerk in the office of the Provincial Auditor of Bukidnon. A cash count showed that Roxas was keeping excess cash of more than P400.00 for which he could offer no explanation except that it could have come from sales of stamps. Roxas would later claim that Moncada instructed or advised him to record said excess as proceeds from stamp sales, and that he did so by entering fictitious stamp sales in varying amounts under five dates in September, 1958 in his official cash book.[2]

Roxas' accounts were again audited on May 30, 1959. This time the examination revealed a shortage of P451.20, which was attributed to the fact that although Roxas had been paid his salaries for the period January through April, 1959 by means of treasury warrants[3] encashed by him with the postmaster of Cagayan de Oro City,[4] he included as cash items in his accounts reimbursement expense receipts for equivalent amounts to cover his salaries for the same period.[5] As this showed in effect, that he had collected, or was trying to collect, twice his salaries for the same period of service, those reimbursement expense receipts were disallowed, and Roxas was found chargeable with the resulting shortage.

Roxas' attempts to explain away the shortage and relate it to what had transpired after and as a result of the initial audit of September 22, 1958 -- about which more will be said later -- fell on deaf ears. The Provincial Auditor brusquely cut him off, saying, "Past is past. Do not talk about the past, let us talk about the present." [6] Given no chance to explain, he simply gave up and signed the auditor's examination report certifying to the shortage [7] because, as he was to testify later, without an explanation, his accounts really showed a shortage. [8]

On the same date of May 30, 1958, formal written demand was made upon Roxas for the immediate restitution of the alleged shortage of P451.20. [9] He decided to pay, as he also later claimed, [10] not because he believed he was accountable therefor, but in the expectation of getting back what he paid as soon as the matter was

straightened out. Roxas was not able to settle the supposed shortage immediately as demanded, nor on the next day, May 31, which fell on a Sunday. He did so, however, two days later, on June 1, 1959.[11]

Roxas was prosecuted in the Court of First Instance of Bukidnon on a charge of malversation of public funds in the amount of the alleged shortage of P451.20.[12] Later the case was reassigned to the Circuit Criminal Court of the 15th Judicial District.[13] After a series of incidents which it would be of no profit to recapitulate here, having no relevance to the merits of this appeal, and following trial in due course, the Trial Court rendered judgment finding Roxas guilty beyond reasonable doubt of the crime charged, for which he was sentenced to serve an indeterminate prison term of from 2 years, 4 months and 1 day of prison correccional to 6 years and 1 day of prison mayor, to suffer perpetual special disqualification and to pay a fine of P451.20 plus the costs.[14] On appeal, said judgment was affirmed by the Court of Appeals.[15] From there Roxas has taken his cause to this Court on a petition for review.

The petition has but one burden. It is that the Court of Appeals, in affirming Roxas' conviction, disregarded strong and clear evidence that said petitioner never in fact incurred in any shortage in his accounts and had "**** decided questions of substance contrary to law and the applicable decisions of this Supreme Court, resulting to (sic) denial of due process, and travesty of justice in convicting an innocent man ***." [16] While this is an imperfect and, at best, imprecise statement of relevant principle insofar as concerns this Court's power to review findings of fact of the Court of Appeals, it appears nonetheless to be a correct appraisal of the state of the proofs regarding the alleged shortage for which Roxas was tried and convicted.

The record discloses compelling documentary and other evidence that no shortage was ever incurred by Roxas in his accounts as acting postmaster and that instead, the imputed shortage was a fiction grown out of an auditor's error in the conduct of the initial audit of September 22, 1958; a fiction, moreover, thereafter perpetuated by Roxas' bumbling but well-meaning attempts to "erase" said "shortage" by making equally fictitious entries in his books and covering the alleged short amount with borrowed funds.

Roxas testified that he lacked not only experience but also knowledge of accounting procedures, both necessary for the job, and that he also had to contend with a very heavy work load; that, as acting postmaster, he had to perform such disparate and multifarious tasks as janitorial work, receiving and releasing mail, selling stamps, encashing money orders and telegraphic transfers, among others, without anyone to assist him (and these, it must be remembered, in an office serving a population of 4,000); that working under such conditions confused his mind and caused him to lapse into errors and inaccuracies in making entries in his books; that after having been found with "excess" cash of more than P400.00 in the audit of September 22, 1958, and having followed the advice or instructions of the examining auditor to enter the amount as proceeds from sales of stamps which he (Roxas) had speculated to be the source of said amount, his accounts would no longer balance, showing a discrepancy of more than P400.00; that in his confused state of mind, he tried to cover the missing amount by putting in his safe an equivalent sum which he borrowed from a cousin; that he discovered the discrepancy had been due to those false entries when a verification of his records of collections and payments by the office of the Chief Accountant of the Bureau of Posts showed an overage of P446.40 as of September 30, 1958; that he collected his salaries for the period January to April, 1959 by drawing from his collections and issuing reimbursement expense receipts therefor; and that when he received treasury warrants to cover his salaries for the same period, instead of redeeming the reimbursement expense receipts with the proceeds thereof, he used said proceeds to pay off the loan with which he had sought to balance his accounts and erase the discrepancy resulting from the entries of fictitious stamp sales.[17] Unstated, but implicit, in this testimony is Roxas' conviction that he was doing nothing illegal or criminal in thus using the proceeds of those treasury warrants because he had in his possession at the time cash, for which he was not accountable to the Government since it represented private funds borrowed to

cover a non-existent shortage, sufficient to redeem the reimbursement expense receipts he had issued.

Beyond what may be inferred from the contents and tenor of such documents as the examination report of the audit of May 30, 1959, Roxas' affidavit of the same date recording his promise to refund the alleged shortage as early as possible, the auditor's letter demanding restitution and the receipt showing that Roxas did pay the amount demanded two days later.[18] the record provides little to impugn the substance and import of Roxas' explanation embodied in his aforesaid testimony. There are, on the other hand, strong and persuasive proofs supportive of his version of the case thus advanced and, particularly, of his claim that there had never been a shortage in his accounts. One of these is the finding of the Chief Accountant of the Bureau of Posts already referred to, contained in said official's letter of October 23, 1958 to the Post Office Inspector,[19] that Roxas' accounts as of September 30, 1958 showed an overage of P446.20. If it is assumed, as it must be, that said official in making that finding had examined and taken into account the cash book[20] and its contents, which at that time already carried the entries of fictitious stamp sales allegedly made on the advice of the auditor Vicente Moncada, then the effect of such evidence is to discredit the audit conducted by the latter who supposedly found excess cash in the keeping of Roxas. Had there be any such excess, it would have been accounted for by the false entries, and the Chief Accountant would have found that Roxas' accounts balanced instead of showing an overage. And clearly, Moncada, the auditor had too hastily accepted Roxas' explanation for the alleged excess cash. For while he disclaimed having instructed Roxas to record stamp sales to cover such excess in just the manner recounted by the latter, he did declare 'that he told Roxas to record it "**** (a)s stamp sales *** in the record of collections;" and he admitted, too, that he had counted the stamps kept by Roxas "piece by piece,"[21] apparently finding none missing or unaccounted for. Thus, he could not have been misled by Roxas' attribution of the excess to unrecorded stamp sales. What he then should have done, but did not do, was re-examine and recount the cash, stamps and other accountable items of Roxas to confirm if in fact there was excess cash that could not be accounted for by any of the recorded transactions under audit. Such omission renders Moncada's audit suspect and fortifies belief in the defense version tracing the shortage allegedly found in the audit of May 30, 1959 to an auditing error in the earlier examination of September 22, 1958.

For the same alleged shortage of P451.20 for which he was criminally prosecuted, administrative charges of dishonesty were preferred against Roxas.[22] The Commissioner of Civil Service, after due investigation, absolved Roxas of the charges, but found that he had acted in a manner prejudicial to the service in failing to keep a true and correct record of his accounts and subjected him to a mere reprimand with warning that future similar omissions would be dealt with more severely.[23] The Commissioner's decision draws attention to one very significant and revealing fact: that when Roxas turned over his accountability to his successor, Calinico Ilogon, following the audit of May 30, 1959, his books showed that out of P16,235.47' worth of stamps received by him, he had sold stamps worth P7,354.95, leaving an unsold balance of P8,880.52; but he had actually turned over to Ilogon stamps worth P9,464.17, or P583.65' worth of stamps more than he was accountable for. From such fact the decision makes the logical conclusion that:

**** This overage (of P583.65) cannot be explained except that it represents the fictitious sales of stamps which respondent posted in his books as requested by the audit examiners.[23] {obviously referring to the audit of September 22, 1958} The whole irregularity could be traced to the previous posting by respondent of fictitious stamp sales to account for the 'overage' which the audit examiners allegedly found in his accounts. When the correct picture came out, there was in fact no overage, and so the fictitious stamp sales which respondent posted to account for the 'overage' caused his books of account to reflect a 'shortage' representing the fictitious amount posted as stamp sales. As a result the government gained and the respondent, in his bid to straighten out his books, actually lost the corresponding amount. ****

Said finding - that when he was relieved of his post after the audit of May 20, 1959, Roxas turned over to his

successor stamps worth P583.65 more than he was accountable for - has not been disproven or shown to be false. Since, therefore, it merits acceptance as the truth, it is fatal to the prosecution's claim of a shortage, posing as it does, the unanswerable question of how an official who turns in P583.65 more than he has to account for can still be charged with a shortage of the much lesser amount of P451.20. It is also confirmative of Roxas' explanation of how it happened that a probably erroneous tally of "excess" cash in the audit of September 22, 1958 became transformed into a shortage in the examination of May 30, 1959.

If the auditor who had confronted Roxas with the supposed shortage in that final audit had had the patience to hear him out and examine for himself the latter's Official Cash Book,[24] he could not have failed to notice that the alleged false entries of stamp sales are indeed conspicuously incongruous and unusual when compared with the other entries whose genuineness is not in question. In the alleged false entries, the figures recorded for the dates of September 22, 23, 24, 25 and 26, 1958 read, respectively, P104.00, P100.00, P80.00, P50.94 and P146.00, for a total of P480.94[25] That 5-day total is considerably more than the P308.50 representing total sales for the rest of the 21 working days of the same month and during which daily stamp sales averaged less than P14.70. Furthermore, an examination of the record of all the other stamp sales during the entire tenure of Roxas from June 11, 1958 to May 30, 1959 shows that daily stamp sales were, for the most part, in the range of from P15.00 to P35.00, with very few beyond that range. The single largest entry for one day's sales is P95.00[26] and the smallest is P5.00. Against such a background, a group of entries which shows sales of more than P100.00 daily for three days within a space of five consecutive days and P80.00 and P50.74 for the remaining two days sticks out like the proverbial sore thumb. It cannot but invite suspicion that it is, as the defense claims, a spurious record made up to account for an auditor's unverified finding of excess cash the source of which could not at the time be clearly explained.

As the Court sees it, the foregoing is persuasive evidence which cuts the ground from under the case for the prosecution, considering that said case must, at a minimum, postulate and prove the existence of a shortage in the funds or property for which petitioner Roxas had to give account to the Government. Where there is evidence the clear intendment of which negates such a shortage, it will simply not suffice to rely on the statutory prescription that the failure of an accountable public officer to have duly forthcoming public funds or property with which he is chargeable upon demand of a duly authorized officer is *prima facie* evidence that the former has put such funds or property to personal uses[27] The presumption of misappropriation or conversion to personal use posits the existence of a shortage; if none exists, it does not operate, and if there is evidence against the existence of an alleged shortage, it must be met and refuted, shown to be unreliable or untrustworthy, before the presumption may be invoked. This the prosecution has not done. It has not impugned the intrinsic worth and credibility of the findings of the Commissioner of Civil Service in deciding the administrative case filed against Roxas, although it correctly asserted that said decision did not operate as *res judicata* here, but that is another consideration altogether not affecting the merits of the findings therein as evidence. It has not proved false the finding in the same decision that while tagged with a shortage of P451.20. Roxas had at the same time turned over to his successor stamps of a value of P583.65 more than he was accountable for. The prosecution has offered nothing to offset the proof implicit in the entries in Roxas' official cash book supporting and confirming said petitioner's claim that the shortage imputed to him was but the long-term offshoot of an auditor's error or oversight in the initial audit of his accounts.

Upon the record, substantial and credible evidence exists, which appears to have been overlooked or disregarded, raising a reasonable doubt of the guilt of petitioner at the very least, and justifying, under well established rule, the exercise of the power of this Court to review in appropriate circumstances the findings of fact of the Court of Appeals.

WHEREFORE, the appealed decision of the Court of Appeals is reversed and petitioner is acquitted, with costs de oficio.

SO ORDERED.

Teehankee, C.J., Cruz, and Paras*, JJ., concur.
Gancayco, J., on leave.

- [1] TSN pp. 17, 87-90.
- [2] Id., pp. 91-92: Exhibits 1, 1-A, 1-B, 1-C, 1-D and 1-E.
- [3] Exhibits C, C-1, C-2 and C-3.
- [4] Original Records, p. 11.
- [5] Exhibits B and B-1 to B-14.
- [6] TSN, p. 99.
- [7] Exhibit D.
- [8] Id., p. 102.
- [9] Exhibit E, Original Record, p. 205.
- [10] Id., p. 107.
- [11] Exhibit 9; TSN, p. 186.
- [12] in Criminal Case No. 735.
- [13] where it was given the new number CCC-XV-91-Bukidnon.
- [14] Original Record, pp. 294-309.
- [15] Rollo, pp. 27-37.
- [16] Rollo, p. 5.
- [17] TSN, pp. 87-105.
- [18] Exhibits H, H-1 to H-10, F and F-1, E and 9, respectively.
- [19] Exhibits 8 and 8-A to 8-C.
- [20] Exhibit A.

[21] TSN, PP. 142-145.

- [22] Administrative Case No. R-25530.
- [23] Decision dated September 14, 1964; Exhibit 7.
- [24] Exhibit A.
- [25] Exhibits 1-A, 1-B, 1-C, 1-D and 1-E; Exhibit A, p. 27.

[26] for May 20, 1959; Annex A, p. 68.

[27] Art. 217, last paragraph, Revised Penal Code.

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