

ARTURO DE GUZMAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, RESPONDENTS.

G.R. No. 54288. December 15, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal by Certiorari from the Decision of respondent Sandiganbayan[1] in Criminal Case No. 190 convicting petitioner, Arturo de Guzman, of Malversation of Public Funds.

We resolved to “(a) give due course to the petition and (b) require the parties to file their respective Memoranda on the constitutional questions raised.”

1. Petitioner assails the rule-making power of the Sandiganbayan as violative of Article X, section 5(5) of the Constitution, which vests on the Supreme Court the power to promulgate rules concerning pleading, practice and procedure in all Courts.

It is true that Section 9 of Presidential Decree No. 1606, the law creating the Sandiganbayan, vests it with rule-making power, thus:

“Sec. 9. Rule-making Power. ? The Sandiganbayan shall have the power to promulgate its own rules of procedure and, pending such promulgation, the Rules of Court shall govern its proceedings.”

However, since the Sandiganbayan is a Court, its rule-making power must be construed, out of "constitutional necessity" as being subject to the approval of the Rules by the Supreme Court. Mr. Justice Antonio Barredo had expressed this view in his Concurring Opinion in "Nuñez vs. Sandiganbayan, 111 SCRA 433, 455 (January 30, 1982) when he said:

"x x x the rule-making power granted to it (the Sandiganbayan) by P.D. 1606 must of constitutional necessity be understood as signifying that any rule it may promulgate cannot have force and effect unless approved by the Supreme Court, as if they have originated therefrom.”

The "Rules of the Sandiganbayan" were promulgated on January 10, 1979, and Rule XVIII thereof expressly provides that they "shall take effect upon approval." The approval referred to can only refer to approval by the Supreme Court. The Sandiganbayan has submitted its Rules to this Court. In the absence of any action of approval or disapprobation from this Court the Sandiganbayan has to be guided by the Rules of Court.[2] We have reviewed the proceedings before the Sandiganbayan and we have not found any indication therein of contravention of the Rules of Court.

2. Petitioner also impugns the authority of the First Division of the Sandiganbayan to hear and decide his case contending that inasmuch as it was the only Division which had been constituted, it could not legally function as a judicial body and, consequently, he was placed in a "precarious predicament".

This argument must also fail. Although the Sandiganbayan is composed of a Presiding Justice and eight Associate

Justices[3], it does not mean that it cannot validly function without all of the Divisions constituted. Section 3 of PD 1606 provides that "the Sandiganbayan shall sit in three divisions of three Justices each". While Section 5 thereof provides that "the unanimous vote of the three justices in a division shall be necessary for the pronouncement of a judgment."

Thus, the Sandiganbayan functions in Divisions of three Justices each and each Division functions independently of the other. As long as a Division has been duly constituted it is a judicial body whose pronouncements are binding as judgments of the Sandiganbayan.

The judgment convicting petitioner was a unanimous Decision of the First Division duly constituted. It thus met the requirement for the pronouncement of a judgment as required by Section 5 of PD 1606, *supra*.

We find no substance to the argument that no member could be expected to dissent because no special Division of five Justices could then be formed, considering that the Decision was a unanimous one and there was no indication that any one of the three Justices had intended to dissent.

3. Petitioner's contention that there is a dilution of his right to appeal inasmuch as Decisions of the Sandiganbayan are subject to review by this Court only by Certiorari under Rule 45 of the Rules of Court[4] and, consequently, he is deprived of his right to appeal on questions of fact, is neither meritorious. On this point, this Court, speaking through Chief Justice Enrique M. Fernando, stressed in the Nuñez case:

"Even from the standpoint then of the American decisions relied upon, it cannot be successfully argued that there is a dilution of the right to appeal. Admittedly, under Presidential Decree No. 1486, there is no recourse to the Court of Appeals, the review coming from this Court. x x x Would the omission of the Court of Appeals as an intermediate tribunal deprive petitioner of a right vital to the protection of his liberty? The answer must be in the negative. In the first place, his innocence or guilt is passed upon by the three-judge court of a division of respondent Court. More-over, a unanimous vote is required, failing which 'the Presiding Justice shall designate two other justices from among the members of the Court to sit temporarily with them, forming a division of five justices and the concurrence of a majority of such division shall be necessary for rendering judgment. Then if convicted, this Court has the duty if he seeks a review to see whether any error of law was committed to justify a reversal of the judgment. Petitioner makes much, perhaps excessively so as to the wont of advocates, of the fact that there is no review of the facts. What cannot be sufficiently stressed is that this Court in determining whether or not to give due course to the petition for review must be convinced that the constitutional presumption of innocence has been overcome. In that sense, it cannot be said that on the appellate level there is no way of scrutinizing whether the quantum of evidence required for a finding of guilt has been satisfied. The standard as to when there is proof of such weight to justify a conviction is set forth in *People vs. Dramayo*".[5]

Justice Barredo, in his Concurring Opinion also observed:

"x x x I believe that the accused has a better guarantee of a real and full consideration of the evidence and the determination of the facts where there are three judges actually seeing and observing the demeanor and conduct of the witnesses. It is Our constant jurisprudence that the appellate courts should rely on the evaluation of the evidence by the trial court judges, except in cases where pivotal points are shown to have been overlooked by them. With more reason should this rule apply to the review of the decision of a collegiate trial court. Moreover, when the Court of Appeals passes on an appeal in a criminal case, it has only the records to rely on, and yet the Supreme Court has no power to reverse its findings of fact, with only the usual exceptions already known to all lawyers and judges. I strongly believe that the review of the decisions of the Sandiganbayan whose three justices have actually seen and observed the witnesses as provided for in P.D. 1606 is a more iron-clad guarantee that no person accused before such special court will ever be finally convicted without his guilt appearing beyond reasonable doubt as mandated by the Constitution."[6]

4. Petitioner's argument that he was deprived of his right to a preliminary investigation as the same was conducted ex parte has much less to recommend it. Petitioner failed to appear at said investigation despite notice thereof received by a member of his family, in the same way that the formal administrative investigation against him for dishonesty, conduct prejudicial to the best interest of the service, and for violation of civil service rules and regulations was similarly conducted ex parte because of petitioner's failure to appear despite due notice served upon and received by his wife, where he was found guilty as charged and dismissed from the service effective on the day immediately following his last day of service, with pay (Exhibit "C").

Besides, an ex parte preliminary investigation is authorized under section 1(b) of PD 911, reading:

"x x x If respondent cannot be subpoenaed, or if subpoenaed he does not appear before the investigating fiscal or state prosecutor, the preliminary investigation shall proceed without him. x x x "

It should also be recalled that the statutory right to a preliminary investigation may be waived expressly or impliedly. Petitioner waived it when he failed to appear for such investigation despite notice. The denial of his petition for reinvestigation by the Tanodbayan was a matter of discretion with the latter.

5. Finally, petitioner's contention that his conviction is not in accord with law and jurisprudence is unmeritorious. The judgment against petitioner sentenced him as follows:

"WHEREFORE, judgment is hereby rendered finding accused Arturo de Guzman guilty beyond reasonable doubt as principal of the crime of Malversation of Public Funds, as defined and penalized in Article 217, paragraph 4, of the Revised Penal Code; and, in default of any modifying circumstance in attendance, sentencing him to an indeterminate penalty ranging from Twelve (12) Years and One (1) Day, as minimum, to Eighteen (18) Years, Eight (8) Months and One (1) Day, as maximum, both of reclusion temporal, with the accessories provided by law and with credit for preventive imprisonment undergone, if any, in accordance with the provision of Article 29 of the Re-vised Penal Code, as amended by Republic Act 6127; to suffer perpetual special disqualification; to pay a fine in the amount of Seventy Six Thousand Five Hundred Twenty One and 37/100 Pesos (P76,521.37); to indemnify the City of Manila, Republic of the Philippines, in the same amount of Seventy Six Thousand Five Hundred Twenty One and 37/100 Pesos (P76,521.37) representing the amount malversed; and, to pay the costs."

We find that the Sandiganbayan has not committed any error of law in convicting petitioner. For the period from May 22, 1978 to June 7, 1978, petitioner, as Travelling Collector and an accountable officer, collected the total amount of P204,319.32 from various agencies (Veterinary Inspection Board, Public Health Laboratory, North Cemetery, among others) but remitted to the General Teller (Mr. Gerardo Verder, now retired), Cash Division Department of Finance, City of Manila, only P127,797.95, thus resulting in a shortage of P76,521.37. Said shortage pertained to collections of petitioner from the Veterinary Inspection Board (Exhibits "H-1-i" to "H-1-n").

Petitioner's contention that his accountability was not proven considering that the audit examination was conducted in his absence and after he had signed the Report of Examination (Exhibit "H") in blank presented to him by Auditing Examiner Maximo Pielago, thus making said procedure irregular, is neither persuasive. If he was not present during the audit examination, petitioner himself was to blame for he should have known that when he received a de-mand letter from Pielago to produce his accountabilities (Exhibit "G") on June 5, 1978 an examination would be forthcoming. Upon petitioner's assurance that he had no more existing accountabilities as he had ceased to make collections due to his expected promotion, and his promise to produce his accountabilities on June 7 or 8, 1978, Pielago presented said Report of Examination to petitioner for signature. On this point, we are in full agreement with the findings of respondent Court:

"Neither is there any merit in the accused's asseverations that his accountability has not been proved. It is true that as candidly admitted by Auditing Examiner Pielago himself, he made the accused sign the Report of

Examination (Exhibit H) in blank even before any examination could be conducted. But, this rather irregular procedure is not altogether without any reasonable explanation. As uncontradictedly explained by Pielago, he resorted to that course of action because, upon his first demand to the accused for the production of his cash and cash items, the latter already told him that he had nothing to account for anymore because he had since ceased making collection in anticipation of his then sup-posed pending promotion. Evidently, because of this assurance from the accused, Pielago may have thought that the projected examination would be merely pro-forma and could not possibly result in anything but a zero-zero balance as far as the accounts of the accused were concerned." [7]

It must be emphasized that petitioner did not report for work anymore beginning June 9, 1978, despite a demand from Pielago for the production of his accountabilities (Exhibit "M"), a reminder of his criminal liability, and the fact that administrative charges had been filed against him for violation of civil service rules and regulations and conduct prejudicial to the best interests of the service (Exhi-bit "F"). Pielago thus proceeded with the audit examination of petitioner's accountability from the official records available, namely:

"x x x Official Receipts issued by him to collection agents from whom he received public funds (Exhibits H-1-a to H-1-n); Daily Statements of Collections Exhibits I, I-1 to I-7) and Official Receipts (Exhibits L, L-1 to L-8) covering remittances made by him of his collection to the General Teller; the Ledger reflecting entries of collections made by him from the Veterinary Inspection Board (Exhibits Q, Q-1, Q-1-a to Q-1-f, Q-2, Q-2-a to Q-2-e); and the Cashbooks also recording his remittances of his collections to the General Teller (Exhibits J, J-1, J-1-a, J-2, J-2-a, K, K-1, K-1-a, K-2-a, and K-2-b)" [8]

As against the above documentary evidence, petitioner's posture that he had turned over his collections everyday to Mr. Gerardo Verder, the General Teller then, who had assured him that he would do the explaining, is lame, indeed. Besides, he could not but admit his accountability for receipts, with serial nos. 155901 to 155990, issued by him, but under the accountability of Gregorio Saño, a travelling collector, because of petitioner's own pending request for transfer of accountability. [9]

In the face of the evidence presented, petitioner failed to overcome the presumption under Art. 217 of the Revised Penal Code that the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any public officer, shall be prima facie evidence that he has put such missing funds to personal use. In Malversation, all that is necessary to prove is that the defendant received in his possession public funds, that he could not account for them and did not have them in his possession and that he could not give a reasonable excuse for the disappearance of the same. An accountable public officer may be convicted of Malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily. [10]

Neither do we find tenable petitioner's contention that his accountability was not established as the Report of Examination was denominated by Pielago as "preliminary". As held by respondent Court:

"True, the report of the audit aforesaid was denominated as 'preliminary'. But, this does not imply that the same may not be taken as basis for determining the extent of the accountability of the accused as of the date of said audit. If there was anything tentative about the finding made, it was only because collections of the accused under official receipts known to be still in his possession and the stubs of which had not yet been submitted, were not yet accounted for. Hence, the only meaning that the term 'preliminary' had in the premises was that the amount of shortage could still be increased if all said receipts are eventually found and taken into account. But, on the basis of the records available to the auditor, the amount of shortage established could not but be considered final."

All told, we are convinced that the constitutional presumption of innocence in petitioner's favor has been overcome and his guilt established beyond reasonable doubt.

WHEREFORE, the judgment appealed from, convicting petitioner of the crime of Malversation of Public Funds, is hereby affirmed.

Costs against petitioner, Arturo de Guzman.

SO ORDERED.

Fernando, C.J., Aquino, Guerrero, Abad Santos, De Castro, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, J., reiterates his concurrence with the grounds of Justice Makasiar's dissent in *Nuñez vs. Sandiganbayan*, G.R. Nos. 50581 and 50617, Jan. 30, 1982.

Makasiar, J., reiterates his concurring and dissenting opinion in the *Nuñez* case; because the crime was committed several days before the promulgation on June 11, 1978 of PD No. 1486 and ordered eleven (11) months before the promulgation on December 10, 1978 of PD No. 1606.

Concepcion, Jr., J., on leave.

[1] Penned by Justice Bernardo P. Fernandez and con-curred in by Presiding Justice Manuel R. Pamaran and Justice Romeo M. Escareal.

[2] Sec. 9, PD 1606, *supra*.

[3] Sec. 1 PD 1606.

[4] Sec. 7, *ibid*.

[5] *Nuñez vs. Sandiganbayan*, pp. 450-451, *supra*.

[6] *Nuñez vs. Sandiganbayan*, p. 457, *supra*.

[7] pp. 41-42, *Rollo*.

[8] p. 42, *ibid*.

[9] Exhibit "R", T.s.n., January 18, 1980, pp. 101-104.

[10] Aquino, *The Revised Penal Code*, Vol. II, 1976 Edition citing *U.S. vs. Melencio*, 4 Phil. 331, (1905); *U.S. vs. Javier*, 6 Phil. 334 (1906); and *People vs. Mingoa*, 92 Phil. 856 (1953).

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