

LEONARDO N. ESTEPA, PETITIONER, VS. SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 59670. February 15, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Leonardo N. Estepa seeks to set aside the decision of the Sandiganbayan in Case No. 3658 convicting him of the crime of malversation of public funds through negligence and sentencing him to an indeterminate penalty of 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.

Petitioner Leonardo N. Estepa was charged in an information which read:

"That on or about January 24, 1980, in the City of Manila, Metro Manila, Philippines, and within the jurisdiction of this Court, said accused, being then Senior Paymaster, Treasurer's Office, City Hall, Manila, and as such is a public officer accountable for the funds received by him by reason of his said position and charged with the duty of diligently safeguarding or looking after the funds placed under his custody, did then and there with great carelessness and unjustifiable negligence, fail to exercise that duty without counting the money during the individual distribution and segregation of said funds at the General Cashier's Room, before assuming total physical control thereof thereby allowing and permitting an unknown man to take, steal, misappropriate and embezzle to his personal use and benefit the amount of FIFTY THOUSAND (P50,000.00) PESOS, Philippine Currency, from the said cashier's room, as in fact that unknown person did take, steal misappropriate, and embezzle the said amount to the damage and prejudice of the government in the aforesaid sum.

CONTRARY TO LAW."^[1]

Upon arraignment, Estepa pleaded not guilty. After trial, the Sandiganbayan rendered a decision convicting Estepa of the crime charged, the dispositive portion of which read:

"WHEREFORE, the Court finds Leonardo N. Estepa guilty beyond reasonable doubt as principal of malversation, defined and penalized under paragraph 4, Article 217 of the Revised Penal Code, and there being no aggravating nor mitigating circumstance in the commission of the offense, he is hereby sentenced to suffer an indeterminate penalty of 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 pay a fine of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency; to suffer the penalty of perpetual special disqualification, to indemnify the City of Manila/National Government the amount of Fifty Thousand (P50,000.00) Pesos and to pay the costs."

His motion for reconsideration having been denied, Estepa filed the present Petition for Review. The Petition was given due course and the parties required to file briefs. In his brief,^[2] petitioner Estepa assigns the following errors:

- Respondent court gravely erred in convicting petitioner of the crime of malversation through negligence although the facts charged in the information do not constitute an offense or crime.
- Respondent court gravely erred in convicting petitioner of the crime of malversation through negligence although the prosecution has never proven beyond doubt that he possessed the allegedly lost money of P50,000.00 which is the material ingredient of the crime charged.
- Respondent court gravely erred in convicting petitioner of the crime of malversation through negligence by citing his other alleged negligent acts which were not alleged in the information, contrary to the due process clause of the 1973 Constitution.
- Respondent court gravely erred in convicting petitioner of the crime of malversation instead of filing malversation charges against his superiors whose gross negligence really caused the loss of that amount.
- Respondent court gravely erred in convicting petitioner, because Justice Guerrero decided the criminal case against him contrary to Section 2 of Rule V of the Rules of Sandigan bayan, which prohibits the preparation of a decision by a court member who has never attended any session thereof as long as the other members are with said court.

From the record, the facts of the case may be collated as follows:

In the morning of 24 January 1980, Leonardo N. Estepa, then a senior paymaster of the Cash Division of the City Treasurer's Office of the City of Manila, together with nine (9) other paymasters and Cesar R. Marcelo, their Supervising Paymaster, went to the Philippine National Bank ("PNB") to encash checks amounting to P7,640,000.00 representing the cash advances then being requisitioned by the ten (10) Paymasters. It turned out, however, that the cash value of those checks was not available at the PNB. Hence, the personnel from the City Treasurer's Office, among them Estepa, accompanied by some officials of the PNB, proceeded to the Central Bank. In the presence of Marcelo, and the ten (10) paymasters, P7,640,000.00 in cash was counted out^[3] and placed inside two (2) duffel bags which, after being properly sealed were loaded inside an armored car and immediately transported to and deposited in the central vault of the City Treasurer's Office of the City of Manila.

Mr. Marcelo testified that there was a power "brownout" at about 1:00 to 2:00 p.m. on that day and the central vault, where they customarily distribute the cash advances was dark; that he decided with the concurrence of Atty. Kempis, the head of the Cash Division, to distribute the cash to the paymasters at the latter's (Kempis') room which was well-lighted by the rays of the sun coming in through a side window.^[4] Marcelo stated that in order to deter third persons from entering that room during the distribution, the door was closed and a guard was posted outside the room by the door.^[5] In the presence of Atty. Kempis and the ten (10) paymasters, Marcelo opened the two (2) duffel bags and again counted out the amount of P7,640,00.00.^[6] The bills were segregated and bundled in denominations of P100.00s, P50.00s, P20.00s and P10.00s up to the last coin, and placed on a big chaise lounge and on a table inside Atty. Kempis' room. Some of the paymasters were assigned to take charge of the bundles of money, one paymaster for each denomination; however, Estepa was not one of those so assigned. As each paymaster was called, each paymaster in charge of a denomination handed to the requisitioner the number of bundles of that denomination corresponding to the amount being requisitioned.

Thus, one at a time, the paymasters were called and given the amounts they had requisitioned. When Estepa's turn

came, Mr. Marcelo asked the paymasters in charge of the bundles of differing denominations to hand to Estepa the amount of P850,000.00. After all the ten (10) paymasters had gotten their money and while all of them were still inside that room, Mr. Marcelo, as was his usual practice, in a loud voice asked them in Pilipino if everything was fine. No complaint or protest was made by anyone of them, including Estepa, and all left the room uneventfully.[7] However, ten (10) minutes later, Estepa reported to Mr. Marcelo that the amount of P50,000.00 was missing from his cash advance. The latter immediately summoned back all ten (10) paymasters and with the help of the Assistant Cashier, counted once again the money just delivered to each of the ten (10) paymasters. It turned out that the amount received by each of them, except Estepa, was correct.

Pacita Sison, an examiner from the Commission on Audit testified that on 25 January 1980, she had examined Estepa's cash and accounts which showed that the latter's account was short by P50,000.00. Thereupon, she reduced her finding into writing which document was signed by Estepa.[8]

Estepa, upon receipt of a formal letter from the City of Manila demanding the amount of P50,000.00, submitted a written explanation denying his liability therefor. He alleged that he had only received the total amount of P800,000.00 — and that the loss of the amount of P50,000.00 occurred before that sum was delivered to him. Estepa also executed On 5 February 1980 a sworn statement to that effect.

Unconvinced, the legal Office of the City of Manila filed a complaint against Estepa with the Tanodbayan. In turn, the Tanodbayan, after conducting a preliminary investigation, filed an information in the Sandiganbayan charging petitioner with the crime of malversation through negligence.

Petitioner's first contention is that the facts alleged in the information did not constitute an offense since there can be no crime of malversation of public funds through mere failure to count the money. His second contention is that the prosecution had not established that he had in fact received the total amount of P850,000.00 and that therefore he should not be answerable for the loss of the P50,000.00. Lastly, he claims that he had not been negligent.

We consider petitioner's first argument to be without merit. We think that petitioner's view of the information is a very narrow and carping one. It will be seen that the information charged him with having carelessly and negligently allowed an unknown person to steal or misappropriate the amount of P50,000.00; that he had failed to exercise his duty as a public officer accountable for public funds received by him and that he had failed to count the money turned over to him at the General Cashier's Room. The crime of malversation of public funds is defined under Article 217 of the Revised Penal Code in the following terms:

"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 malversation does not exceed two hundred pesos.
2. The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
3. The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos, but is less than twelve thousand pesos.
4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than

twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use. (As amended by RA 1060.)"

Turning to the second contention of Estepa, we consider that it was proven beyond reasonable doubt that the amount of P850,000.00 had in fact been distributed to petitioner Estepa. The total amount of P7,640,000.00 was counted out by Mr. Marcelo, Supervising Paymaster, before the actual distribution to the ten (10) paymasters of the amounts respectively requisitioned by them. After petitioner Estepa had reported that P50,000.00 was lost or missing from the cash advance, Mr. Marcelo rounded up all the ten (10) paymasters and counted once again the money distributed to and held by each of the ten (10) paymasters. This recount showed that none of the nine (9) other paymasters had received an amount in excess of the amount requisitioned by each. In other words, in the recount after Estepa had reported his loss, the total amount of P7,590,000.00 was accounted for (P7,640,000 - P50,000.00). The loss reported by Estepa occurred after turnover to him of the entire amount of P850,000.00.

The explanation offered by Estepa of the loss of P50,000.00 was summarized by the Sandiganbayan in the following terms:

"In exculpation, accused narrated, inter alia, what transpired inside the room of Atty. Kempis during the partitioning of the money to the ten paymasters. According to him, the room of Atty. Kempis was closed to the public. Together with the other paymasters, accused witnessed the opening of the two duffel bags and counting of the money by Mr. Marcelo. There was no complaint of shortage. He placed them on one side of a sofa which was three meters away. Because some of the paymasters were already going out and accused was afraid that the public might enter the office of Atty. Kempis, accused decided to bring the money with smaller denominations to the table of Pangilinan which was three to four meters away leaving the bigger denomination at the sofa. He did this because accused could not carry the whole amount. By then, there were some people inside the office of Atty. Kempis and the latter was seated at his table. Thereupon, he brought the bundles of bigger denominations (P100s and P50s) directly to his cage and then returned for the bundles of smaller denominations. After counting the money inside his cage, he discovered that one bundle of P50.00 bills worth P50,000.00 was missing. He searched inside his cage looking at the floor where the bundle could have dropped because it was dark. After about ten minutes of futile search he reported the loss to Atty. Kempis."

The Sandiganbayan, addressing the question of whether or not petitioner Estepa had been negligent in the handling of the money that he, along with the other nine (9) paymasters had received from the Supervising Paymaster, analyzed the foregoing explanation of petitioner Estepa in the following manner:

"There is no gainsaying that accused was present when the money which were to be withdrawn from the depository bank, was counted at the Central Bank. There was no shortage. Before his eyes, the entire amount was placed inside two duffel bags which were sealed and subsequently deposited in the central vault of the City Treasurer's Office, Manila. When these two duffel bags were opened, accused as well as the other requisitioning paymasters were present. Again, Mr. Marcelo counted the money. No shortage. Thereupon, each paymaster received the amount he requisitioned. In the case of the accused, the total sum corresponding to his name was P850,000.00. It was at this moment when Mr. Marcelo asked the paymasters if they had received the correct amount by directing the question, "Ayos na ba kayo diyan?" No one answered including accused. This is one phase of his negligence. If he had not yet fully counted the money he received, accused should have voiced himself out. Instead, he let the occasion pass in silence giving the impression that the money he had

received was in accordance with the amount due him.

His fault is not only limited to such inaction. By his own account, people were starting to enter the room of Atty. Kempis. Yet, he left the bundles of bigger denominations at the sofa without even asking somebody to watch for them and proceeded to the table of Mr. Pangilinan where he left the money of smaller denominations.

From the sketch (see Exh. "E") of the City Treasurer's Office submitted by the accused, it is clear that the table of Mr. Pangilinan was outside the room of Atty. Kempis. The danger to the money left at the sofa was real. Again, he left the same bundles this time at his cage with nobody to watch them when he returned for the bundles of smaller denominations at the table of Mr. Pangilinan. Accused admitted that at that time, Eufrocinio Mendoza who shared the same cage with him, was not inside the cage. Prudence should have cautioned accused to wait for Mendoza before returning for the smaller denominations. Certainly, it was foolhardy to leave bundles of money of high denominations of P100 or P50 with no one to guard for them even only for a fleeting moment. In short, accused's inexcusable negligence consisted of the following: (1) failure to check — and recheck the denominations received by him before the paymasters dispersed; (2) not sounding off that he was not absolutely certain of the amount received when Mr. Marcelo asked the paymasters, "Ayos na ba kayo diyan?" (3) failure to ask Atty. Kempis or any other person to watch over the money of bigger denominations at his cage before he returned to the table of Mr. Pangilinan for the smaller denominations. Had he not been remiss on these, there would have been no opportunity for an unknown hand to surreptitiously get hold of the money." (Italics supplied)

After careful examination of the records of this case, including the detailed testimony of the witnesses, we find no reason to depart from the conclusion reached by the Sandiganbayan that petitioner had indeed been negligent in the handling of the funds which had been turned over to him.

In the crime of malversation, all that is necessary for conviction is proof that the accountable officer had received the public funds and that he did not have them in his possession when demand therefore was made and he could not satisfactorily explain his failure so to account. An accountable public officer may be convicted for malversation even if there is no direct evidence of personal misappropriation, where he has not been able to explain satisfactorily the absence of the public funds involved.[9]

Under Article 217 of the Revised Penal Code, there is prima facie evidence of malversation where the accountable public officer fails to have duly forthcoming any public funds with which he is chargeable upon demand by duly authorized officer. As this Court has pointed out, this presumption juris tantum is founded upon human experience.[10]

In the present case, petitioner was neither able to produce the missing amount of P50,000.00 nor adequately to explain his failure to produce that amount. Petitioner's explanation leaves one thoroughly dissatisfied. If one took petitioner's explanation seriously and literally, the mysterious, unseen third person could have picked up the missing bundle of P50.00 bills either (1) from the sofa inside the room of Atty. Kempis where he had left the bundles of large denomination bills, without asking anyone to keep an eye on them while he left the room; or (2) from petitioner's cage outside Atty. Kempis' room where he left the bundles of large denomination bills, again without anyone being left in charge thereof, while he went back to Mr. Pangilinan's desk (also outside Atty. Kempis' room) to retrieve the bundles of small denomination bills he had previously deposited on top of said desk without, once more, getting some one to watch those bundles. Petitioner's self-confessed coming and going — from sofa to Pangilinan's desk; back to sofa and then to his cage; and back to Pangilinan's desk and finally to his cage — created at least two (2) clear opportunities for the invisible third person to pick up the missing P50,000.00. Clearly, petitioner was very relaxed and casual in the handling of the bundles of money entrusted to him.

Petitioner in fact tried to exculpate himself by suggesting that it was his superiors — Atty. Kempis and Mr. Marcelo — who had been negligent and whose negligence had really caused the loss of the P50,000.00. We are unable to take seriously petitioner's claim that because the superiors had not waited for restoration of electric power in the office of the City Treasurer of Manila before proceeding with the distribution of the P7,640,000.00, his superiors should be held responsible for the loss. Concededly, it had not been customary to distribute funds in a room other than the central vault. However, the distribution was done in the room of Atty. Kempis which, petitioner Estepa had admitted, was sufficiently lighted by sunlight coming through one of the windows. Moreover, as already pointed out, except for Mr. Marcelo, Atty. Kempis, and the ten (10) paymasters and the person guarding the entrance of the room, no other persons had been allowed to enter the room until after all the ten (10) paymasters had received the correct amount requisitioned by them. Finally, since no one had asserted otherwise when Mr. Marcelo had asked the group if everyone had been served, as it were, he had no reason to suppose that petitioner then had not yet ascertained (as he now claims) whether he had received the full P850,000.00.

Finally, petitioner argues that the ponente, Associate Justice Buenaventura J. Guerrero had no authority to write the decision in Case No. 3658 because he was not a member of the First Division of the Sandiganbayan when that case was heard.

Section 3, Rule V of the Sandiganbayan reads:

"Sec. 3. Assignment of Cases Permanent. — Cases assigned to a division of the Sandiganbayan in accordance with these rules shall remain with said division notwithstanding changes in the composition thereof and all matters raised therein shall be deemed to be submitted for consideration and adjudication by any and all of the Justices who are members of the division aforesaid at the time said matters are taken up, irrespective of whether they were or were not members of the division at the time the case was first assigned thereto; Provided, however, that only such Justices who are members of the division at the time a case is submitted for decision shall take part in the consideration and adjudication of said case, unless any such member thereafter ceases to be a member of the Sandiganbayan for any reason whatsoever in which case any Justice chosen to fill the vacancy in accordance with the manner provided in Section 2, Rule III, of these Rules shall participate in the consideration and adjudication of said case; Provided, lastly that the Sandiganbayan en banc may, for special or compelling reasons, transfer cases from one division thereof to another." (Italics supplied.)

Under the foregoing Section, any member of a Division of the Sandiganbayan who is such at the time a case is submitted for decision may take part in the consideration and adjudication of that case.

In the instant case, we therefore agree with the Solicitor General that since Justice Guerrero was a member of the First Division of the Sandiganbayan at the time the case was submitted for decision, there was no legal objection to his writing the decision for the Division.

WHEREFORE, the Petition for Review is DENIED for lack of merit and the Decision of the First Division of the Sandiganbayan dated 15 December 1981 is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Original Record, p. 1.

[2] Rollo, p. 7.

[3] TSN, 11 November 1981, pp. 15, 29-30.

[4]] Id., p. 22.

[5] TSN, 16 November 1981, p. 14.

[6] Id., p. 31.

[7] Sandiganbayan's Decision, Rollo, p. 23; TSN, 18 November 1981, pp. 13-14.

[8] Original Exhibits, Exhibit "F".

[9] De Guzman v. People, 119 SCRA 337 (1982).

[10] Bacasnot y Callao v. Sandiganbayan, 155 SCRA 379 (1987).

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