

MODESTO A. MAHINAY, PETITIONER, VS. THE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 61442. May 09, 1989

Ponente: PARAS, J.

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PARAS, J.:

The petitioner, Modesto Mahinay, was employed as Cashier I of the Butuan General Hospital from July 1, 1973 to October 31, 1977 (Decision, Criminal Case No. 2628, p. 3; Rollo, p. 27).

On October 13, 1977, Antonio T. Martirez, Resident Auditor of the Butuan General Hospital examined in the presence of Modesto Mahinay, the cash and accounts of Modesto Mahinay covering the period from July 1, 1973 to October 31, 1977. Antonio Martirez found Modesto Mahinay to have incurred a shortage of P20,619.40. Consequently, Antonio Martirez prepared his report of examination which was signed by the petitioner (Decision, Criminal Case No. 2628, pp. 3 and 9; Rollo, pp. 27 & 33).

Subsequently, a letter of demand was sent by Antonio Martirez to the petitioner requiring the latter to produce the missing funds and to submit an explanation on how the shortages been incurred. The petitioner submitted his reply letter dated January 25, 1979 (Ibid, p. 3, Rollo, p. 27).

The petitioner was charged with the crime of Malversation of Public Funds before the Sandiganbayan. The Information states:

"That on or about and during the period comprised between July 1, 1973 to October 13, 1977, in the City of Butuan, Philippines, and within the jurisdiction of this honorable Court the above named accused being an employee of the Butuan General Hospital. Butuan City as Cashier I and as such is responsible and accountable for the public funds collected and received by him in trust by reason of his position did then and there willfully, unlawfully and feloniously and fraudulently and with grave abuse of confidence, misappropriate, misapply, embezzle, malverse and take away from said funds the sum of TWENTY THOUSAND SIX HUNDRED NINETEEN PESOS AND FORTY CENTAVOS (P20,619.40) Philippine Currency which he appropriated and converted to his own personal use and benefit and inspite or repeated demands to restitute said amount he failed and refused and still fails and refuses to do so to the great damage and detriment of the Philippine Government and the public interest.

"CONTRARY TO LAW." (Rollo, p. 134).

When arraigned, the accused duly assisted by counsel de parte pleaded "not guilty". (Decision, Criminal Case No. 2628, p. 2; Rollo, p. 26).

After trial on the merits, the Court* found Modesto Mahinay guilty as charged.

The dispositive portion of the decision reads:

"IN THE LIGHT OF THE FOREGOING CIRCUMSTANCES, the Court finds accused Modesto Mahinay y

Azura, GUILTY, beyond reasonable doubt as Principal of the crime of Malversation of Public Funds, defined and penalized under Art. 217, paragraph 4 of the Revised Penal Code. In the absence of any modifying circumstance, since none was appreciated, the Court hereby sentences the said accused to suffer an indeterminate penalty ranging from TEN (10) YEARS, and ONE (1) DAY of Prison Mayor as minimum, to SIXTEEN (16) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of Reclusion Temporal as maximum, to suffer the penalty of Special Perpetual Disqualification, to pay a fine of P20,619.40, to indemnify the Government of the Republic of the Philippines in the said amount of P20,619.40 and to pay the costs.

"SO ORDERED." (Rollo, p. 42).

A motion for reconsideration of the decision filed by the petitioner was denied. Hence, this petition with the following assignments of error:

I

THE SANDIGANBAYAN ERRED IN LEANING HEAVILY ON THE LAST PARAGRAPH OF ARTICLE 217 OF THE REVISED PENAL CODE IN ORDER TO CONVICT PETITIONER.

II

THE SANDIGANBAYAN ERRED IN RELYING TO SUPPORT ITS DECISION OF CONVICTION, ON CASES WHICH ARE NOT ON ALL FOURS WITH, AND THEREFORE NOT APPLICABLE TO, THE CASE AT BAR. (Rollo, pp. 12-13)

In the resolution of September 14, 1982, the Court required the Solicitor General to comment on the petition within ten (10) days from notice (Rollo, p. 68) which was complied with on October 25, 1982 (Rollo, p. 73).

In the resolution of November 4, 1982, the Court required the petitioner to file a reply to the Solicitor General's comment (Rollo, p. 83). On December 10, 1982, the Petitioner filed his reply to the comment of the Solicitor General (Rollo, p. 86).

In the resolution of March 12, 1985, the petition was given due course (Rollo, p. 98). The brief for the petitioner was filed on May 14, 1985 (Rollo, p. 111) while the brief for the respondents was filed on September 23, 1985 (Rollo, p. 169).

The sole issue in this case is whether or not the petitioner has committed malversation of public funds under Article 217 of the Revised Penal Code.

The petitioner contends that the presumption established by Article 217 of the Revised Penal Code that a public officer has put missing funds or property to personal use in the event of his failure to have duly forthcoming any such public funds fund or property, with which he is chargeable, upon demand by any duly authorized officer, is merely prima facie and may be rebutted or overcome by proof to the contrary. Since he presented at the trial "vale" slips signed by Audit Aide Pacifico Alcorido thereby showing that he has not put said funds or property to personal use and the cash advances in question extended by him in good faith and in the honest belief that it was his duty to do so, the prima facie presumption is destroyed and the mere absence of funds is not sufficient proof of conversion.

It is further argued by the petitioner that the mode of extending cash advances by mere "vale" slips was one of long standing, in existence well ahead of the time he became the cashier of the Butuan General Hospital and never heretofore questioned by the Commission on Audit.

The contention of the petitioner is without merit.

Article 217 of the Revised Penal Code provides that 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 shall be guilty of the misappropriation or malversation of such funds or property. (Underscoring supplied).

There is no dispute that the presumption of malversation under Article 217 of the Revised Penal Code is merely prima facie and rebuttable, so that if the accountable officer has satisfactorily proven that not a single centavo of the missing funds was used by him for his own personal interest but extended cash advances to co-employees in good faith, with no intent to gain and borne out of goodwill considering that it was a practice tolerated in the office, the presumption of guilt is overthrown (*Quizo v. Sandiganbayan*, 149 SCRA 108). However, the circumstances obtaining in the *Quizo* case are not obtaining in the case at bar. Among others, in the *Quizo* case, there was full restitution made within a reasonable time, while in the instant case there was none.

But more importantly, in the instant case, the petitioner admitted that the total shortage of P20,619.40 represents the “vales” of Mr. Alcordo for travels, telegrams, mails, for entertainment of his superiors, newspapers and salary differentials, from 1971 to 1976, and Alcordo did not give him reimbursement receipts representing the “vales” (Decision, Criminal Case No. 2628, p. 5, Rollo, p. 29).

Moreover, the respondent court found: (a) that the petitioner continued to disburse funds from his collection to issue “vales” to Alcordo despite the latter’s transfer to another place of assignment and inability to submit the required vouchers that could have established the legality of the disbursements or “vales” (Decision, Criminal Case No. 2628, pp. 10-11; Rollo, pp. 34-35); and (b) that per findings of the Resident Auditor, the petitioner juggled or manipulated the cash book entries and made it appear that he made deposits to conceal the “vales” or amounts loaned which were never redeemed by Alcordo and/or other employees concerned, and which deposits in turn, were verified by the Auditing Examiner to be fictitious since the said deposits were not supported by any slips nor could said deposits be traced to the bank statements (Decision, Criminal Case No. 2628; p. 13; Rollo, p. 37).

It is therefore, apparent that the petitioner, in violation of Article 217 of the Revised Penal Code, negligently consented or permitted Alcordo to take public funds for which he is accountable.

The petitioner's claim of good faith in extending the cash advances in question is belied by his admission that he was aware of existing COA regulations prohibiting the extension of cash advance by way of “vales” to government employees (Decision, Criminal Case No. 2628, p. 5; Rollo, p. 29).

In addition, per findings of the Resident Auditor, the petitioner never remitted his collections to the National Treasury regularly, thus, enabling him to accumulate collections as much as P20,000.00 or more. The petitioner also withheld part of the collections amounting to as much as P15,000.00 or more every time a deposit is made in contravention of the provisions of General Circular Nos. 82 and 82-A which require that collections of National Funds as a general rule should be remitted to the National Treasury at anytime it reaches P500.00 or more, at least once a month regardless of the amount (Decision, Criminal Case No. 2628, p. 12; Rollo, p. 36).

Under the foregoing circumstances, it is evident that the defense has not successfully rebutted the prima facie presumption of malversation.

PREMISES CONSIDERED, the petition for review is **DENIED** and the decision of the respondent Sandiganbayan is **AFFIRMED**.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Feliciano, J., in the result.

* Decision penned by Associate Justice Ramon V. Jabson, concurred in by Associate Justices Romeo M. Escareal and Conrado M. Molina, Second Division.

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