

FELIX VILLACORTA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, RESPONDENTS.

G.R. No. 68268. November 12, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Elevated to this Court on Certiorari is the Amended Decision of the Sandiganbayan convicting petitioner, Felix Villacorta, of Malversation of Public Funds (Criminal Case No. 4212).

We resolved to give due course and required the parties to file their respective Briefs, which they have done.

Petitioner became the Municipal Treasurer of Pandan, Catanduanes, in August, 1975. As a result of an audit in 1978 by the Commission on Audit of his cash accountability showing a total shortage of P71,930.35, he was charged with Malversation of Public Funds on September 9, 1981 before respondent Sandiganbayan, allegedly committed as follows:

"That on or about the period comprised between August 1 to August 29, 1978 inclusive or within said dates in the Municipality of Pandan, Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while being the incumbent Municipal Treasurer of Pandan, Catanduanes and while acting as such and under the obligation to account for all the funds or property that came into his official position and abusing and taking advantage of his official position, with intent of gain and personal benefit, did then and there, wilfully, unlawfully and feloniously malverse, take and appropriate for his own personal use and benefit and permitted other persons thru his consent to take public funds in his custody in the total amount of SEVENTY ONE THOUSAND NINE HUNDRED THIRTY PESOS and 35/100 CENTAVOS (P71,930.35) in Philippine Currency, thereby misappropriating, taking and malversing Government Funds, to the damage and prejudice of the government in the aforementioned amount."[1]

After trial, the Sandiganbayan found petitioner liable only for P30,995.94 and convicted him in a judgment, the decretal portion of which reads:

"WHEREFORE, the Court finds and declares the accused, Felix Villacorta, guilty beyond reasonable doubt, as principal of the crime of Malversation of Public Funds defined and penalized under Article 217, paragraph 4, and there being neither aggravating nor mitigating circumstances to consider, he is hereby sentenced to suffer an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as maximum, suffer perpetual special disqualification, pay a fine of P30,995.94, indemnify the Municipality of Pandan, Catanduanes in the same amount and pay the costs."[2]

Acting on petitioner's Motion for Reconsideration on the ground that the amount of P30,995.94, for which he was found liable had been restituted, the Sandiganbayan rendered an Amended Decision, disposing:

"WHEREFORE, for the reasons set forth above, the 'Motion for Reconsideration' is denied. However, appreciating two mitigating circumstances, voluntary surrender and full restitution of the amount, the penalty

imposed on him in the original decision is hereby amended so that the above-named accused is instead sentenced to suffer an indeterminate penalty ranging from Six (6) Years, One (1) Month and Eleven (11) Days of prison mayor as minimum to Twelve (12) Years, Five (5) Months and Eleven (11) Days as maximum, suffer perpetual disqualification, pay a fine of P30,995.94, and pay the costs."[3]

In this Petition for Certiorari, petitioner prays for acquittal.

The Audit Report described the shortage in petitioner's cash and accounts as follows:

"FINDINGS AND OBSERVATIONS

"1. Mr. Felix Villacorta was found short by P71,930.35 in his cash accountability.

Our examination of the cash and accounts of Mr. Felix Villacorta on August 29, 1978 revealed a shortage of P71,930.35 which was arrived at as follows:

F U N D S

Local

Trust

Infra

SEF

Total

Cashbook balance

August 1, 1978

P25,173.98

P12,661.92

P72,794.52

P2,243.63

P112,874.05

Add: Collections

August 1-29/78

26,478.83

.....

11,462.43

.....

37,941.26

Total

P51,652.81

P12,661.92

P84,256.95

P2,243.63

P150,815.31

Less:

Disbursement

August 1-29/78

50,934.20

685.00

23,140.00

.....

74,759.20

Accountability

August 29, 1978

P 718.61

P11,976.92

P61,116.95

P2,243.63

P76,056.11

Less: Cash and

Valid Cash Items:

Cash (P51.75))

Valid Cash Items,)

Mini. Payrolls (P4,074.01)) 4,125.76 Difference

(Shortage) P71,930.35

The shortage consisted of chits and disallowed cash items in the custody of the following:

Chits

Dissalowed

Cash Items

Total

Refer to Appendices

a) Felix Villacorta

Municipal Treasurer

P18,339.00

P20,277.62

P38,616.62

11-13

b) Maximo Sanchez

Asst. Mun. Treasurer

18,027.92

....

18,027.92

14-17

c) Preciosimo

Evangelista License Clerk

12,128.43

3,304.29

15,432.72

18-21

Total

P48,495.35

P23,581.91

P72,077.26*

* Chits and disallowed cash items exceeded the computed shortage by P146.91.

"The chits belonging to the following officials and employees were of various dates from 1975 to 1978:

N a m e

Position

Amount

Jorge V. Almojuela

Municipal Mayor, Pandan

P20,255.47

Felix Villacorta

Municipal Treasurer

4,977.20

Maximo Sanchez

Asst. Mun. Treasurer

745.49

Preciosimo Evangelista

License Clerk, MTO

2,575.27

Rizalino Rima

License Clerk, MTO

2,018.06

Jose Sales

Clerk, MTO

3,487.94

Orlando Caballero

Clerk, MTO

1,080.05

Manuel Ante

Janitor, MTO, Pandan

1,898.52

Moises Soneja

Adm. Deputy PTO

1,774.00

Juan Bautista

Asst. Chief Property PTO

200.00

Jaime Abundo

Chief Checker, PTO, Virac

1,463.59

Apolinar de Quiroz

Sang. Member, Pandan

133.81

Mateo Fernandez

Sang. Member

197.46

Arsenio Balmaceda

- do -

1,300.33

Isidro Acaramon

- do-

704.65

Rufo Segismundo

- do -

335.52

Benigno del Barrio

Sang. Member

138.00

Jeremias Trinidad

- do -

8.00

Mateo Condeno

- do -

215.00

Gerardo Asorena

- do -

58.00

Rafael T. Molina

Asst. Provincial Auditor

700.00

Bienvenido Tabuzo

Chief of Section, PAO

3,298.18

Oliver Vargas

Checker-Inspector, PAO

350.00

Jose V. Alberto

189.00

Marcelo Baltazar

Patrolman

35.50

Tolomeo Emerenciana

58.00

Juana Frias

143.50

Jesus Lopez

154.81

T o t a l

P48,495.35

"The disallowed cash items consisted of purchases of supplies and materials without approval and/or invoice; unapproved cash advances, wages, traveling expenses, salaries, living allowances and commutations of leave and unapproved payment of labor and materials to a contractor. (See Appendices 22 and 23)"[4]

After trial, the Sandiganbayan found petitioner liable only for his personal shortage of P38,616.62, thereby excluding the liabilities of the Asst. Municipal Treasurer and the License Clerk, (supra). His resultant shortage was computed thus:

Personal shortage

P38,616.62

Less: Carry-over item

from his predecessor-in-interest

P 120.00

Deposits on Sept. 4
and 6, 1978

7,500.68

7,620.68

P30,995.94

In respect of that amount, the Sandiganbayan concluded:

"x x x. The evidence conclusively shows that he had allowed other persons to appropriate some of those funds totalling P30,995.94.

"In view of all these, We are convinced that the accused has violated Article 217 of the Revised Penal Code and although there is no direct evidence that he personally benefited from these funds, the fact remains that he had allowed others to freely participate of them."

Moving for reconsideration, petitioner successfully showed that after his transfer from Pandan, Catanduanes, to Bagamanoc, Catanduanes, he had sent letters of demand to the government personnel whose chits and vouchers were disallowed by the Regional Audit Team and made part of petitioner's shortage, and that these persons responded by paying their accounts to the Municipal Treasurer of Pandan, Catanduanes, who had succeeded him (petitioner). The alleged shortage having been restituted, said Municipal Treasurer cleared petitioner of any accountability to the Municipality.

In the same Motion for Reconsideration, petitioner also made mention, in passing, that the Assistant Municipal Treasurer and the Chief Clerk in petitioner's office were allowed to pay their respective shortages (supra) through salary deductions.[5]

As the prosecution filed no opposition nor comment to the manifestations in petitioner's Motion for Reconsideration despite the period allowed by the Sandiganbayan, said Court promulgated its Amended Decision, supra, sustaining petitioner's guilt but appreciating in his favor the mitigating circumstances of voluntary surrender and full restitution of the amount reasoning that "it has long been established in jurisprudence that the total restitution of the amount of shortage is not a circumstance which could entitle an accused to acquittal although the same may mitigate the penalty."

Under Article 217 of the Revised Penal Code, the crime of Malversation of Public Funds or Property is committed as follows:

"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:

xxx xxx xxx

"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 uses." [6]

After a careful review of the evidence, we find that petitioner has successfully rebutted the prima facie evidence of his misappropriation. The cash in petitioner's possession was found short of what he should have had because of the disallowance by the Audit Team of certain items. Those items comprising the alleged shortage were paid to government personnel either as wages, travelling expenses, salaries, living allowances, commutations of leave, terminal leaves and for supplies. Petitioner did not put such missing funds to personal uses. Proof of that being that when he demanded payment from those officials and personnel, they redeemed their chits and made restitution.

The evidence likewise reveals that at the time of the audit, petitioner had an "actual balance deposit" in the Office of the Provincial Treasurer in the total amount of P64,661.75 as of August 29, 1978, as shown by a Certification issued by the Provincial Treasurer of Catanduanes, dated September 28, 1978 (Exhibit "2"). [7]

If petitioner had "allowed others to freely participate of the chits/vouchers," it was a practice which seemed to have been tolerated even during the time of his predecessor (Exhibit "3").

Nor can negligence approximating malice or fraud be attributed to petitioner. If he made wrong payments, they were made in good faith mainly to government personnel, some of them even working at the provincial auditor's and the provincial treasurer's offices. And if those payments ran counter to auditing rules and regulations, they did not amount to a criminal offense and he should only be held administratively or civilly liable.

WHEREFORE, petitioner is hereby acquitted of the crime with which he has been charged. Costs de officio.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur.
Feliciano, J., on leave.

[1] Respondents' Brief, p. 1.

[2] *ibid.*, pp. 1-2

[3] *ibid.*, p. 2.

[4] Folder of Exhibits, pp. 34-35.

[5] Annexes "D" and "E", Motion.

[6] As amended by Rep. Act No. 1060, approved June 12, 1954.

[7] Appendix 7, Audit Report.

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