

JESUS SALVACION Y ALLEGADO, PETITIONER, VS. SANDIGANBAYAN, RESPONDENT.

G.R. NO. 68633. July 11, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner is before us to challenge his conviction of the crime of technical malversation by the Sandiganbayan. He alleges grave abuse of discretion in the appreciation of the factual issues and so is in effect raising the legal question of due process.

This case stemmed from the failure of the accused to produce the amount of P30,083.85 when his accounts as Postmaster I of the Post Office of Balingasag, Misamis Oriental, were audited by the regional director of the Commission on Audit for that area.[1] His claim was that it had been stolen from him on April 30, 1982, while he was on his way to deposit the same with the Development Bank of the Philippines branch in Cagayan de Oro City.

Disbelieving him, the Tanodbayan filed the corresponding information against him for violation of Article 217 of the Revised Penal Code.[2] The Sandiganbayan shared that disbelief and, after trial, found him guilty.[3]

Article 217 of the Revised Penal Code provides:

"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 by 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:

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"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 fund or property to personal uses. (As amended by Rep. Act No. 1060)."

As the petitioner was unable to make good the shortage on demand, it was incumbent upon him to overcome the presumption established by the last paragraph of the article and satisfy the court that he had not in fact put the missing funds to his personal use.

The petitioner's testimony is summarized as follows:

In the morning of April 30, 1982, following standard operating procedure, he required four of his subordinates to witness his sorting of the cash and checks intended for deposit, entering the item in his cashbook. The witnesses signed the logbook to attest to the withdrawal of the amount of P30,083.85 from the office vault. Thereafter, at about 8:30 a.m., he took a bus for Cagayan de Oro City to deposit the said amount and, arriving there at about 10

o'clock, took a tricycle for the DBP branch where he was to make the deposit. A man was already in the vehicle when he boarded and two others joined him later, and they were the men who then en route divested him at gunpoint of the clutch bag containing the money he was going to deposit. They later forced him to board a waiting jeep on the way which proceeded about two or three kilometers to a waiting car. This car headed for Iligan City but some two-and-a-half kilometers later, he was pushed out of the vehicle, which then sped away. Unable to hitch-hike back, he walked towards Cagayan de Oro. Immediately upon arrival there at about 6:30 p.m., he reported the hold-up to the police and the desk sergeant at the station blotted his complaint. He slept that night in his nephew's house in the city. The next morning, at 5:30 o'clock, he reported the robbery to his superior, the assistant regional director of Region X of the Bureau of Posts. He was advised to report the matter to the Postmaster-General and he did. His superior even accompanied him to the PC provincial commander to seek his help in the apprehension of the culprits.[4]

In rejecting the petitioner's justification, the Sandiganbayan pointed to several flaws therein that it said rendered the account implausible.

The Sandiganbayan wondered why the amount deposited was only P30,083.85, suspiciously the exact amount reported as stolen, when the petitioner was supposed to maintain a cash reserve in his office of only P10,000.00.[5] The trial court thought it strange that he did not include in his deposit the amount of P6,785.88 in cash items (e.g., checks and treasury warrants) and that even after the commission of the alleged robbery, an amount double the authorized cash reserve still remained in his accounts.

It appears, however, that the supposed excess of some P20,000.00 consisted of post-dated checks (which could not have been deposited then), advances of the post office clerks, and collections made later that day and two days later, or received after the petitioner had left to make his deposit in the morning of April 30, 1982.[6]

The Sandiganbayan also observed that "from this account the clear implication is that the robbery was pre-planned,"[7] but we fail to see the clear implication of this statement. All the court a quo concludes from this finding is that the narration is unbelievable.

To be sure, it does not say how such a finding could contribute to the guilt of the petitioner, much less that the petitioner participated in the planning; indeed, it does not even so suggest. In fact, all the Sandiganbayan does is ask, to make the point that the story was incredible, why the petitioner was detained when the robbers already had the money; why they seared his arm with lighted cigarettes; why they forbade him from observing the route they were taking; why it took seven hours before they finally released him; what they were doing in that period, etc.

The trial court also could not believe that when the petitioner reported the incident at the police headquarters in Cagayan de Oro City, the investigator merely told him to come back after he had secured a medical certification of his burns. Noting also that the police did not even take a statement from the driver of the tricycle, who was the only other witness of the alleged robbery, it declared that these curious circumstances tended to show that the alleged robbery was pure fabrication.

It seems to us that the implausible features of the petitioner's account vitalize rather than weaken its authenticity as a mere concoction would have been more cleverly contrived and avoided such imperfections. A He would have been more symmetrical in its falsity. Furthermore, it seems unfair to impute criminality to the petitioner simply because the robbers acted irrationally or "unprofessionally" and the police were far from efficient in reacting to the petitioner's complaint, serious as it was. The petitioner surely had no control of their acts.

We find it significant that immediately after the claimed robbery, the petitioner took the necessary steps to report the incident to the proper authorities, as befitted a genuine victim. The record shows that he lost no time in doing

this, going first to the police upon his arrival on foot in Cagayan de Oro City, after walking two-and-a-half kilometers; then at the first hour of the following morning to his immediate superior, the assistant regional director; and also to the Postmaster-General by telegram.[8]

This was the natural action of a person who had nothing to conceal and wanted everything on the record at once for his own protection. As Justice de Castro observed in *Gali vs. Court of Appeals*, 98 SCRA 268:

"If strictly construed, as penal provisions should be the legal presumption in Article 217 of the Revised Penal Code comes into application only when in the ordinary course of examination, there being no previous report of loss through suspicious acts ascribed to third person or persons, shortage is discovered, and a demand to make good the shortage is made but not complied with. The circumstances in the instant case are quite different as already demonstrated, the loss of the money having been reported before the cash examination, not after, and the cause of the loss as reported having a district ring of truth and reality, not a mere 'figment of the imagination,' nor a tell-tale story 'loose and altogether easy to concoct,' as the state counsels described the theory of the defense. And with the evidence presented by the petitioners standing un rebutted, we are satisfied that the legal presumption should not be made to support conviction, as was the only basis of the lower court's finding of guilt against petitioners.

Finally, it is also necessary to note that the amount the petitioner reported as stolen tallied with the amount he had previously entered in his logbook for deposit, as attested by his four subordinates, and with the shortage later determined after the audit of his accounts.

If there is any implausibility worth considering, it is the conjecture that the petitioner was willing to fake the robbery and thus risk losing his retirement privileges, which he stood and expected to receive after a lifetime career in the government, besides visiting upon his head the stigma of a convicted embezzler. And for what? For a measly share in the amount of P30,083.85, to be distributed among four or perhaps even more conspirators, at the rate of less than P8,000.00 each.

The prima facie evidence laid down in Article 217 of the Revised Penal Code has been refuted in this case, and it was left to the Tanodbayan to prove the actual misappropriation of the missing amount. As the prosecution has failed to do so, this petition must be and is hereby granted. The Office of Legal Aid of the UP College of Law is commended for its able representation of the petitioner, who, without its energetic defense, could have been unjustly condemned.

While it should be the common desire of bench and bar that crime is not left unpunished, it is no less important, if not more so, that the innocent be shielded from hasty prosecution and rash conviction. We have nothing but praise for sincerity and zeal in the enforcement of the law.

Nevertheless, the undeserved penalties inflicted upon the blameless, and the indelible stain upon their name, which is never quite washed away by time, should caution all concerned to a more careful and conscientious scrutiny of all the facts before the finger is pointed and the stone is cast,

WHEREFORE, the appealed decision is REVERSED and the petitioner is ACQUITTED. No costs.

Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and Paras, JJ., concur.
Teehankee, C. J., took no part.

[1] TSN, April 13, 1984, pp. 10-11.

[2] Orig. Rec, p. 1.

[3] Orig. Rec, p. 77.

[4] TSN, June 14, 1984, pp. "18-40.

[5] TSN, June 14, 1984. p. 45.

[6] TSN, June 15, 1984, p. 6.

[7] Rollo, p. 37.

[8] TSN, June 14, 1984. PF 35-39.

[9] Orig. Rcc, p. 52.

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