

RESTITUTO PALMA GIL AND NESTOR PELAYO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 73642. September 01, 1989*

Ponente: GUTIERREZ, JR., J.

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In a joint decision covering Criminal Case No. 9968, Criminal Case No. 9969, Criminal Case No. 9970 and Criminal Case No. 9971, the Sandiganbayan convicted Restituto Palma Gil of the crime of malversation (Criminal Case No. 9968); Restituto Palma Gil and Eusebio G. Pantillo of the crime of technical malversation (Criminal Case No. 9969); Restituto Palma Gil and Nestor Pelayo of the crime of falsification of public/official document (Criminal Case No. 9970); and Restituto Palma Gil of violating section 3(h) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft Practices Act (Criminal Case No. 9970). The dispositive portion of the decision reads:

"WHEREFORE, the Court finds as follows:

"(1) The accused, Restituto Palma Gil y Basoc in Criminal Case No. 9968, guilty beyond reasonable doubt as principal of the crime of Malversation of Government Property, punishable under paragraph 4 of Article 217 of the Revised Penal Code, and there being no modifying circumstances in attendance, hereby sentences him to suffer an indeterminate penalty ranging from twelve (12) years and one (1) day of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum; to restitute to the Municipality of Caraga, Davao Oriental, 9,000 board feet of yakal lumber worth P53,100.00. In case of failure of restitution, said accused is ordered to pay to the municipality the sum of P53,100.00, aside from costs. Further, the accused is hereby ordered to suffer the penalty of perpetual special disqualification, and to pay a fine equal to the value of the property embezzled;

"(2) The accused, Restituto Palma Gil y Basoc and Eusebio Pantillo y Galapo, in Criminal Case No. 9969, guilty beyond reasonable doubt as co-principals of the crime of Technical Malversation punishable under Article 220 of the Revised Penal Code, and there being no modifying circumstances in attendance, hereby sentences them each to ten percent (10%) of the sum of the amount misapplied, considering that no damage or embarrassment to the public service has resulted from such misapplication. Both accused are also ordered to pay their proportionate shares of the costs.

"(3) The accused, Restituto Palma Gil y Basoc, Nestor Pelayo y Burgos, in Criminal Case No. 9970, guilty beyond reasonable doubt as co-principals of the crime of Falsification of Public/Official Documents punishable under paragraph 2 of Article 171 of the Revised Penal Code, and there being no modifying circumstances in attendance, hereby sentences them each to suffer an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of prision correctional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum; and to pay a fine of P2,000.00 each, plus their proportionate shares of the costs; and

"(4) The accused, Restituto Palma Gil y Basoc in Criminal Case No. 9971, guilty beyond reasonable doubt as principal of the crime of Violation of Sec. 3(h) of R.A. No. 3019, as amended, and there being no modifying

circums-tances in attendance, hereby sentences him to suffer an indeterminate penalty ranging from three (3) years and one (1) day as minimum, to six (6) years and one (1) day as maximum; to further suffer perpetual disqualification from public office; and to pay the costs.

"The Tanodbayan is hereby directed to conduct a preliminary investigation to determine the existence of a probable cause with respect to Exhibits B, C, C-1 and 1, and to file the necessary informations if so warranted.

"Let copies of this Decision be furnished the Minister of Local Government and Community Development, New City Hall, Quezon City; the Provincial Governor and Sangguniang Panlalawigan of Davao Oriental, Mati, Davao Oriental; and the Sangguniang Bayan, Caraga, Davao Oriental, for their informations and guidance." (Rollo - 73613, pp. 131-133)

The four informations filed by the Tanodbayan charged the above-mentioned persons, all public officers at the time of the alleged commission of the offenses as follows:

Criminal Case No. 9968 (People v. Restituto Palma Gil) --

"That on or about December 3, 1980; in the municipality of Caraga, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, he being th0e Municipal Mayor of said municipality, officially received eighty (80) cubic meters of yakal logs by means of a Deed of Donation executed by Consolidated Plywood Industries, Inc., to the Municipality of Caraga, for the construction of Lugusan, Binogtuan, Nanaingan and Cuta bridges, of said municipality and as such, accountable for such government property, taking advantage of his public position, with grave abuse of confidence and in relation thereto, did then and there, wilfully, unlawfully and feloniously take, misappropriate or embezzle or consent or through abandonment or negligence, permit any other person to take such government property with an equivalent value in the amount of ONE HUNDRED SEVENTY-SEVEN THOUSAND (P177,000.00) PESOS, Philippine Currency, which he appropriated and converted to his personal use and benefit, to the damage and prejudice of the government in the aforementioned amount.

"CONTRARY TO LAW." (Rollo - 73613-16, p. 49)

Criminal Case No. 9969 - (People v. Restituto Palma Gil and Eusebio Pantillo) --

"That on or about the 3rd day of July, 1981, in the municipality of Caraga, Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, public officers, namely, Restituto Palma Gil, a Municipal Mayor of Caraga, Davao Oriental and Eusebio G. Pantillo, a Municipal Treasurer of said municipality and as such, taking advantage of their public positions and in relation thereto, and without authority of law, did then and there wilfully, unlawfully and feloniously, conspiring, confederating and helping one another diverted and applied a public fund under their administration, which was appropriated for the Capital Improvement Program (CIP) of the Municipality of Caraga in the fiscal year 1981, in the amount of P78,00.00 to a public use, other than that for which said fund was appropriated by law.

"CONTRARY TO LAW." (Rollo - 73613-16, p. 50)

Criminal Case No. 9970 - (People v. Restituto Palma Gil and Nestor Pelayo) -?

"That on or about the 8th day of July, 19, 1981, in the Municipality of Caraga, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, public officers, Restituto Palma Gil being the Municipal Mayor of Caraga, Davao Oriental, and Nestor Pelayo, being the Municipal Secretary of said municipality, taking advantage of their positions and in relation thereto, did then and there wilfully, unlawfully and feloniously conspiring, confederating and helping one another caused the preparation and issuance of a resolution of the Sangguniang Bayan of Caraga, Davao Oriental by making it appear that the Sangguniang Bayan had prepared a Resolution No. 47-81 approving and concurring the reversion and reappropriation of the amount of P78,000.00 which fund was used for the Capital Improvement Program (CIP)

of Caraga, Davao Oriental when they did not in fact so participate because in truth and in fact said SB Resolution No. 47-81 refers to the appropriation of P1,000.00 from the Infrastructure Program of the Municipality of Caraga and said amount was a municipal aid to the BOA Primary School, Caraga, Davao Oriental.

"CONTRARY TO LAW." (Rollo - 73613-16, pp. 50-51)

Criminal Case No. 9971 - (People v. Restituto Palma Gil) --

"That on or about June to August, 1981, in the Municipality of Caraga, Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, he being the Municipal Mayor of Caraga, Davao Oriental, taking advantage of his public position and in relation thereto, did then and there wilfully, unlawfully and feloniously directly or indirectly having financial or pecuniary interest in the business contract or transaction in connection with which he intervenes or takes part in his official capacity as Mayor such as, in the hauling of 2,531 bags of cement and other materials intended for various projects of the Municipality of Caraga, Davao Oriental, by using his two (2) units of cargo trucks charging trucking fees thereof worth in the total sum of P26,265.10 which acts is (sic) prohibited by the Constitution or any existing laws, to the damage and prejudice of the government in the aforesaid sum of P26,265.10.

"CONTRARY TO LAW." (Rollo - 73613-16, pp. 51-52)

By agreement of the parties, separate hearings were held subject to the condition that the testimony of a witness called to the stand by either the prosecution or the defense would pertain to any one or two or three or all of the four (4) cases.

As stated earlier, the Sandiganbayan found all the accused guilty as charged. The Sandiganbayan's joint decision in these cases is now the subject matter of these consolidated petitions filed by all the accused.

The petitioners assign the following errors:

A

THE SANDIGANBAYAN ERRED IN CONVICTING MAYOR PALMA GIL OF MALVERSATION IN G.R. NO. 73613 BY RELYING ON THE ALLEGED WEAKNESS OF HIS CLAIM THAT HE SUPPLIED THE LUMBER USED TO BUILD A CUTA BRIDGE RATHER THAN ON THE STRENGTH OF THE PROSECUTION EVIDENCE.

B

THE SANDIGANBAYAN ERRED IN CONVICTING MAYOR PALMA GIL AND TREASURER PANTILLO IN G.R. NO. 73614 OF TECHNICAL MALVERSATION DESPITE ABSENCE OF EVIDENCE TO SHOW THAT INCLUSION OF PROJECTS IN THE CIP, OR CAPITAL IMPROVEMENT PROGRAM, IS EQUIVALENT TO APPROPRIATING BY LAW OR ORDINANCE A SPECIFIC PUBLIC FUND TO A SPECIFIC PUBLIC USE AS REQUIRED IN ARTICLE 220 OF THE REVISED PENAL CODE. IN ANY EVENT, THE SANDIGANBAYAN OVERLOOKED THE SIGNIFICANT FACTS AND LEGAL ISSUE THAT (1) USE OF P78,000.00 FROM THE CIP FOR OTHER MUNICIPAL PROJECTS WAS MADE PURSUANT TO ORDINANCE AND THE CONSEQUENT DISBURSEMENTS WERE APPROVED BY THE PROVINCIAL AUDITOR, AND (2) THAT THE CIP PROJECTS WERE EVENTUALLY ACCOMPLISHED.

C

THE SANDIGANBAYAN ERRED IN CONVICTING MAYOR PALMA GIL AND NESTOR PELAYO IN G.R. NO. 73615 AND 73642 OF FALSIFICATION OF SANGGUNANG BAYAN RESOLUTION NO. 47-81 WHEN IT OVERLOOKED MATTERS OF SUBSTANCE IN EVALUATING THE EVIDENCE.

D

THE SANDIGANBAYAN ERRED IN CONVICTING MAYOR PALMA GIL IN G.R. NO. 73616 OF VIOLATING R.A. 3019, SEC. 3 (H) BY NOT PROPERLY APPRECIATING UNDISPUTED FACTS CONSISTENT WITH INNOCENCE SHOWING THAT THE ACCUSED DID NOT PARTICIPATE IN THE CONTRACT IN QUESTION, OR SHARE IN THE BENEFITS THEREOF CONTRARY TO ESTABLISHED DECISIONS PARTICULARLY IN LIM YHI LUYA V. COURT OF APPEALS, 78 O.G. NO. 25, PP. 3208-3233 AND INSTEAD RELIED ON WEAK AND INCOMPLETE CIRCUMSTANTIAL EVIDENCE.

E

THE SANDIGANBAYAN ERRED IN ALL THE CASES IN REFUSING TO CONSIDER THAT THE PROSECUTION OF THE ACCUSED NOTWITHSTANDING THE ACCOMPLISHMENT OF PUBLIC PROJECTS INVOLVED IN THE ABSENCE OF GAIN OR BENEFIT DERIVED BY MAYOR PALMA GIL IN THE HAULING CONTRACT SUBJECT OF G.R. NO. 73616, WAS POLITICALLY MOTIVATED. (pp. 15-17, Petitioners' Brief)

The assigned errors submitted in G.R. Nos. 73613-16 are substantially the same as those submitted in G.R. No. 73642.

The petitions clearly indicate that the petitioners question the conclusions of the Sandiganbayan insofar as its appreciation of the facts is concerned.

Under Section 7 of Presidential Decree No. 1606 in relation to Rule 45 of the Revised Rules of Court, the factual findings of the Sandiganbayan are generally binding upon this Court. This general rule is, however, subject to some exceptions, among them: 1) When the conclusion is a finding grounded entirely on speculation, surmise and conjectures; 2) the inference made is manifestly mistaken; 3) there is a grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) said findings of facts are conclusions without citation of specific evidence on which they are based and 6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record. (Cesar v. Sandiganbayan, 134 SCRA 105 [1985])

The petitioners contend that these cases fall under the exception to the general rule because the Sandiganbayan's findings are contrary to the established facts and it has overlooked matters of substance in the evaluation of the evidence.

G.R. No. 73613 (Criminal Case No. 9968)

It is not disputed that 80 cubic meters of yakal logs were donated by the Consolidated Plywood Industries, Inc. to the municipality of Caraga as evidenced by a deed of donation dated December 31, 1980 (Exhibit "L"); that Mayor Restituto Palma Gil by virtue of Resolution No. 122-80 of the Sangguniang Bayan of the municipality accepted the donation and that the logs were deposited in the mayor's premises.

The logs were intended "for use as bridge materials of the Lugusan, Binogtuan, Nanaingan and Cuta Bridge" as stated in the deed of donation.

The evidence on record shows that the donated logs were not used in the Cuta bridge as construction on this bridge was already completed in July 1980 before the donation of logs for the purpose could materialize. None of the logs were used in the Lugusan and the Binogtuan bridges because there was no program of work on the former bridge while the latter bridge is semi-concrete in nature. It was only in the repair of Nanaingan bridge wherein part of the donated logs were used. Instead, the resulting excess lumber was used in other municipal projects. The petitioners felt that no irregularities were committed in using the donated logs on other pressing projects since according to then Governor Rabat of Davao Oriental who facilitated the donation, the mayor "had a wide discretion in the use of the logs." (p. 81, Rollo - G.R. No. 73642). Thus, the excess lumber, after the completion of repairs on Nanaingan bridge, was used in the following municipal projects: 1) municipal high school building; 2) mini grandstand; 3) shade house; 4) part of the public market; and 5) 9,000 board feet were used to replace the quantity of lumber which the mayor had earlier purchased and advanced for the construction of the Cuta bridge, the high school building, the shade house, and the public market.

The Sandiganbayan concedes that part of the donated logs were indeed used in the aforesaid projects. However, it did not give credence to the mayor's allegation that he had earlier advanced 9,000 board feet for the construction of the Cuta bridge and the other municipal projects. The court said:

"x x x [T]he excess lumber, after the construction of Nanaingan Bridge in 1981 was disposed of as follows: he took 9,000 board feet as replacement of the Lumber used in Cuta Bridge which he paid for, and the rest were used in municipal projects like the mini grandstand, high school building, shade house and partly in the public market. Which means that Mayor Palma Gil must be held guilty of malversation of 9,000 board feet of yakal lumber. It does not matter if he really bought the lumber used in the construction of Cuta Bridge or not because no proof was introduced during the trial to that effect, other than his say so (sic). What is clear and convincing is the testimony of prosecution witness Luis Madanlo to the effect that in August or September, 1980, he and several others were hired by Mayor Palma Gil to handsaw logs into lumber of which 9,000 board feet were transported to Cuta through the Ministry of Public Highways trucks for the construction of the Cuta Bridge. (See t.s.n., July 23, 1985, pp. 8-9).

"Also clear and convincing is the testimony of prosecution witness Juan Ferrando who swore that he sent a written complaint to the District Forester of the Bureau of Forest Development stationed at Lumbajon, Bagangon, Davao Oriental, about illegal cutting of yakal timber at Sacuan, Manurigao, Caraga, during March and April, 1980, by Luis Madanlo and another person, these two having been hired by Mayor Palma Gil to handsaw the said logs for use in the construction of Cuta Bridge. The written complaint was dated October 6, 1980. (See Exhibit FF). This complaint was followed by a telegram from the said witness on December 22, 1980 complaining about the inaction of the same district forester and his men. (See Exhibit GG).

Thus, the evidence adduced in Criminal Case No. 9968 is: that the Cuta Bridge was constructed in June or July, 1980 with the use of 9,000 board feet of yakal lumber which were cut from the public forests at Sacuan, Manurigao, Caraga, Davao Oriental, and that 9,000 board feet of yakal lumber were appropriated by Mayor Palma Gil out of the donation which he received for the municipality from the Consolidated Plywood Industries, Inc., for which he is answerable under Article 217 of the Revised Penal Code. Considering that the price of yakal lumber in Caraga at the time was P5.90 per board feet, the 9,000 board feet which Mayor Palma Gil misappropriated is P53,100.00 for which he must be condemned under paragraph 4 of the aforesaid provision of the Revised Penal Code." (Rollo- 73642, pp. 106-108)

We rule that the testimonies of Luis Madanlo and Juan Ferrando did not prove beyond reasonable doubt the guilt of the mayor. In fact, their testimonies even bolster the mayor's defense. Thus, Madanlo's testimony to the effect that he was hired and paid by the mayor to handsaw logs into lumber intended for the Cuta bridge gave credence to the mayor's stand that he advanced his own money to construct Cuta bridge. This procedure is not at all unusual because according to Teodoro Palma Gil, a former governor and a former assemblyman of Davao Oriental, a

"municipal mayor may commence a municipal project without a previously approved appropriation, even using his own personal funds which he reimbursed later out of funds appropriated, subject to rules and regulations of accounting." (p. 93, Rollo, G.R. NO. 73642) The mayor's testimony that before he made the replacement, he first consulted Governor Rabat and was told to use the excess in any project of the town was not rebutted. Furthermore, the mayor, a businessman was considered one of the richest in the town and could well afford to advance his own money for municipal projects.

As regards Ferrando's complaints of illegal cutting of yakal against the mayor which he filed with the District Forester of the Bureau of Forest Development, suffice it to state that, by Ferrando's own admission, no action was taken against the mayor. Considering the constitutional presumption of innocence accorded to the accused in criminal cases, we assume that no action was taken in the illegal cutting case because there was no sufficient basis for such action. This belies the credence given to the alleged source of the logs as testified by Ferrando.

All these factors tend to show that the prosecution did not prove beyond reasonable doubt the charge of malversation against the mayor. The mayor satisfactorily explained that the donated logs were disposed of to construct municipal projects. Hence, it was incumbent upon the prosecution to prove otherwise. This, it failed to do. There is absolutely no showing that the petitioners sold the excess lumber or used it for private purposes or otherwise profited from the same. On the contrary, he fully accounted for the lumber because the municipal projects where it was used were actually constructed.

As pointed out by the petitioners, complainant Juan Ferrando himself credited the accused with having constructed bridges and making land transportation possible between Caraga and the provincial capital of Mati, Davao Oriental. When Davao Oriental was still part of Davao province, Caraga was accessible only by ferry service. After 1967, roads and bridges had to be started. The Sandiganbayan summarized the testimony on this point as follows:

"As mayor, he has constructed buildings and other infrastructure projects for the Municipality of Caraga, like the Cuta Bridge which was accomplished in July, 1980; the Binogtuan Bridge which was finished in 1982-83; the Nanaingan Bridge in 1981-82; the Lugusan Bridge in 1983-84; the concreting of Balante and Osmena Streets in the town proper; the construction of a two-storey building for the municipal high school, the mini grandstand with basketball court, the mini-shade house and the extension of the park. (Rollo of G.R. Nos. 73613-16, p. 95)

It is true that all that is needed to find a public officer guilty of malversation is a failure to produce funds or property for which he is accountable, on demand. However, if the funds or property were validly used for public purposes naturally they can no longer be produced.

"Article 217 of the Revised Penal Code provides that it shall be prima facie evidence of malversation when a public officer fails to have duly forthcoming any public funds or property for which he is chargeable on demand by any duly authorized officer. That presumption of guilt is founded on human experience and is valid. (*Albores v. Court of Appeals*, 132 SCRA 604)

"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 even if there is no direct evidence of misappropriation and the only evidence is that there is shortage in his accounts which he has not been able to explain satisfactorily. (*De Guzman v. People*, 119 SCRA 337 [1982])." (*Bacasnot v. Sandiganbayan*, 155 SCRA 379, 382-383 [1987]) (Emphasis supplied)

There being a satisfactory explanation of the shortage, the presumption of guilt disappears.

G.R. NOS. 73614, 73615, and 73642

(Criminal Cases Nos. 9969 and 9970)

In convicting Mayor Palma Gil and Municipal Treasurer Eusebio G. Pantillo of the crime of technical malversation and Mayor Palma Gil and Municipal Secretary Nestor Pelayo of the crime of falsification of document, the Sandiganbayan relied on the supposed several flaws in the claims of the defense which engendered in the mind of the Court serious doubts as to the truth of the testimonies of the witnesses.

This is incorrect.

The well-entrenched principle is that the prosecution must rely on the strength of its evidence and not on the weakness of the defense. Following this principle, we find, on the contrary, that there are flaws in the evidence of the prosecution which engender reasonable doubt in our minds as to the culpability of the petitioners.

We next take up the falsification charge against Mayor Palma Gil and Municipal Secretary Nestor Pelayo.

In this regard, the court relied heavily on complainant Ferrando's testimony to the effect that he was not able to secure from the provincial secretary a copy of Resolution 47-81, the reversion resolution and the alleged refusal of the municipal secretary to give him a copy of the subject Resolution.

These facts even if true are not convincing proof of the non-existence of Resolution 47-81 which reverts P78,000.00 of Capital Improvement Program (CIP) funds to fund new projects. Although it is a standard operating procedure that copies of all resolutions of the Sangguniang Bayan must be forwarded to the Provincial Secretary, this is not conclusive proof that copies of resolutions not found in the custody of the Provincial Secretary are non-existent. This is a matter of procedure taken after the passage of the resolution by the Sangguniang Bayan. The point of query must be whether or not the Sanggunian Bayan really passed such a reversion Resolution.

The Sangguniang Bayan was then composed of the mayor, the vice-mayor, Sangguniang Bayan members, the president of the association of barangay captains and the president of the Kabataang Barangay.

Exhibit B, which is a certified true copy of Resolution No. 47-81 of the Sangguniang Bayan of Caraga approved the recommendation of the Municipal Development Committee embodied in the committee's Resolution No. 1-81 to divert P78,000.00 of Community Improvement Program (CIP) funds to other projects namely: mini-grandstand, shade house and part of the municipal park. It appears that except for Randy Cosme, the president of the Kabataang Barangay all members of the Sangguniang Bayan were present. The evidence also shows that all except Vice-Mayor Bantayan admit that the revision Resolution was taken up and passed during the regular session on July 8, 1981.

The Vice-Mayor who testified for the prosecution stated that he came to know of the existence of the resolution reverting P78,000.00 during the month of August, 1981, yet he did not take any action; that in the same month municipal secretary Nestor Pelayo approached him at his residence and requested him to sign an already prepared resolution which appeared to have been taken up on July 8, 1981 with him (Bantayan) as the sponsor and which pertained to the P78,000.00 reversion of municipal funds; that he did not agree with the proposition so he refused to sign the resolution; and that Exhibit C, a copy of a resolution appropriating P1,000.00 for the Boa Primary School is the resolution which was actually taken up and approved on July 8, 1981 and which was numbered Resolution 47-81.

Far from making him a star witness for conviction, the statements made by Vice-Mayor Bantayan cast doubt on his credibility. If he knew as early as August 1981, the falsification of the Resolution why then did he not take

action against his political opponent? Why did he wait for a private citizen in the person of Ferrando to investigate the matter? Furthermore, his statement that he was approached by Municipal Secretary Pelayo as regards the reversion Resolution must be totally discredited because Resolutions of the Sangguniang Bayan are signed by only two persons: the secretary who certifies to its correctness and the presiding officer who attests thereto. When this particular resolution was adopted, the presiding officer was the mayor who was then present during the session.

Pedro Benogsudan, the then municipal development coordinator of the municipality of Caraga also testified that he was present during the Sangguniang Bayan session held on July 8, 1981 but no reversion resolution was passed. This testimony should not be given credence as against the positive statements of the presiding officer and the members considering that he was not a member of the Sangguniang Bayan. Moreover, Vice-Mayor Bantayan who was actually present during the session did not confirm Benogsudan's presence. On the other hand, the other member's of the Sangguniang Bayan were one in saying that Benogsudan was not present during the session. It was explained by the mayor that members of the Municipal Development Committee of which Benogsudan is a member may attend the session of the Sangguniang Bayan if they are required by the mayor or if they ask permission from the mayor. In this particular session, Benogsudan never asked permission to attend the session. Neither was he required to attend the session.

Another factor which negates Benogsudan's credibility is the fact that he also claimed that the Municipal Development Committee never met on July 3, 1981 and, therefore, never passed Resolution No. 1-81, which paved the way for the enactment of the reversion Resolution. Significantly, even the prosecution does not believe him because no charges for the falsification of this Resolution were filed against the members of the committee namely, Kagawad Pedro de Guzman, Municipal Treasurer Pantillo, the Secretary of the Committee, Mr. Adelito Lozano and Mayor Palma Gil who is the Chairman. In fact, in the complaint filed by Ferrando against the petitioners with the Tanodbayan, he never questioned the validity of Resolution 1-81 of the Municipal Development Committee which recommended the reversion of P78,000.00 CIP funds to other municipal projects. He stated:

xxx xxx xxx

"4. On July 3, 1981, the Municipal Development Committee of the Municipality of Caraga approved Resolution No. 1-81 reverting the appropriations for the CIP projects mentioned in paragraph 3 hereof and re-appropriated the amounts as follows x x x." (Exhibit 2, p. 2)

As regards the prosecution's insistence that Resolution No. 47-81 refers to the appropriation of P1,000.00 municipal aid to the Boa Primary School, and not the reversion resolution as was indicated in a copy of Resolution No. 47-81 which Ferrando secured from the provincial secretary, municipal secretary Pelayo explained: 1) during the month of July, 1981, copies of the resolutions taken up in the July 8, 1981 session of the Sangguniang Bayan were distributed to the different officers like the municipal treasurer, the provincial auditor and the provincial secretary; 2) the assignment of the number to resolutions of the Sangguniang Bayan is done when the minutes of the session are transcribed by the clerk; 3) he assigned said numbers of the resolutions previously passed; 4) that when the barangay captain of Boa asked for a copy of the resolution appropriating P1,000.00 for his school, he discovered that there were two (2) resolutions bearing the same number, that is 47-81 which is the reversion resolution and the Boa resolution, hence in order to distinguish one from the other, he added "A" to the latter resolution and placed his initial "P" after it, but he did not alter the contents thereof.

These two resolutions were adopted in the July 8, 1981 session of the Sangguniang Bayan as reflected in the minutes of the session (Exhibit 1). Hence, the municipal secretary's explanations as regards the same number (47-81) designating the two (2) resolutions appear plausible and satisfactory. Apparently, this confusion resulting

from two resolutions having the same number became known and was taken advantage of by some persons to file a complaint for falsification against the mayor and the municipal secretary.

Anent the technical malversation charge, the Sandiganbayan said:

"x x x [With the falsified Resolution which, in effect, is void ab initio, accused Mayor Restituto Palma Gil, in confederation with accused treasurer, Eusebio G. Pantillo, without authority of law, and taking advantage of their positions, diverted and applied CIP funds of the Municipality of Caraga in the amount of P78,000.00 to a public use, other than that for which said fund was appropriated by law.

"The Court is satisfied that Mayor Palma Gil advanced amounts for the construction of the mini grandstand, shade house and part of the municipal park although the total of said amounts was not revealed. And although the diverted amount was paid to him to reimburse him for his expenses, we are willing to concede that the crime he committed in confederation with the accused Eusebio Pantillo, who knew all along that Resolution No. 1-81 of the Municipal Development Committee is non-existent, (Accused Eusebio Pantillo is a member of the Committee) is technical malversation under the provisions of Article 220 of the Revised Penal Code." (Rollo - 73642, pp. 120-121)

We reiterate our finding regarding the existence of Resolution No. 1-81 of the Municipal Development Committee which recommended the reversion of P78,000.00 of CIP funds earlier set aside for the construction of a guest house and market layout and initial improvement for other projects namely - a mini grandstand, multi-purpose shade house and park stage expansion.

Governor Rabat testified on the nature of CIP funds as follows: 1) that what is programmed is not always implemented as changes may be made depending on circumstances; 2) that appropriations for one project may be re-appropriated or directed to other projects upon the passage of the proper resolution by the Sangguniang Bayan.

The Sangguniang Bayan through Resolution No. 47-81 approved the recommendation to divert P78,000.00 of CIP funds to other projects. The Sangguniang Bayan found that the mayor actually advanced his personal money to begin these other projects which were completed and that the reverted CIP funds were used to reimburse the mayor for some of his expenses.

Under these circumstances, we find no legal basis to convict the mayor and the municipal treasurer of technical malversation under Article 220 of the Revised Penal Code.

Article 220 of the Revised Penal Code provides that for technical malversation to exist it is necessary that public funds or properties had been diverted to any public use other than that provided for by law or ordinance. In this instant case, this requirement is not present because as explained by Governor Rabat, CIP funds by nature are not earmarked for a particular project but are for community improvement purposes.

G.R. NO. 73616 - CRIMINAL CASE NO. 9971

In finding the mayor guilty of violating section 3(h) of the Anti-Graft Law (Republic Act No. 3019, as amended) the Sandiganbayan dwelt on circumstances which convinced the court that the mayor is guilty as charged.

The record shows that to prove the mayor's violation of the Anti-Graft Law, the prosecution presented the testimonies of Cayetano Iturralde and Rogelio Bacalla:

"Cayetano Iturralde executed an affidavit, Exhibit R, the contents of which he affirmed except as to paragraph 10 thereof which he clarified by executing a supplemental affidavit, Exhibit R-1 before he came to Manila to testify in the instant cases. In Exhibit R, he declared that he is the operator of the CMI Trucking with one (1) cargo truck under 'TH' denomination; that sometime in June, 1981, Mayor Palma Gil's driver by the name of

Roger approached him with the information that the said mayor is awarding to him a contract to haul cement and other materials intended for Caraga; that he told Roger he could not accept the contract because he has only one (1) unit which he is using for previous contracts; that Roger informed him that the two (2) cargo trucks of Mayor Palma Gil may be used by him; that he agreed and Mayor Palma Gil's two (2) cargo trucks were used to haul lumber, G.I. corrugated iron sheets, cement, nails, round bars, M.T., Drums, diesel oil and hardware, wherein tracking fees in the amount of P16,577.10 were paid by the government after he issued the waybills for said cargoes; that the payments were collected by Mayor Palma Gil through Roger who gave the information that the Mayor needed the money for certain obligations; that there are many more cargoes for the municipality of Caraga which needed hauling, to which he consented provided quarterly taxes in the amount of P800.00 be paid by the Mayor; and that more cargoes were hauled with the use of Mayor Palma Gil's cargo trucks wherein the sum of P9,688.00 was paid by the Ministry of Public Highways in trucking fees which he himself collected and deposited with the Philippine National Bank, and after deducting his travel expenses, he issued a check for P9,617.56 payable to Monte Chavez Shell Marketing who is a creditor of Mayor Palma Gil.

"In Exhibit R-1, Cayetano Iturralde stated that the transactions concerning the use of Mayor Restituto Palma Gil's cargo trucks were negotiated by Rogelio Bacalla, alias 'Roger', who is Mayor Palma Gil's driver, and not by the mayor himself.

"Cross-examined on the two (2) affidavits which was agreed upon by the parties as his direct testimony, Cayetano Iturralde declared thus: that he never had any direct contract with Mayor Palma Gil in connection with the use of the latter's cargo trucks; that he never gave any amount to Mayor Palma Gil but to the gasoline station and the receipts were handed to Roger; that during the hauling operations, he was the one referred to as truck operator; that the check in payment of the first hauling operation was not withdrawn by him; that Mayor Palma Gil's trucks were used for about three months; and that he presumed that Roger had authority to use the trucks because previous to the hauling, he had occasion to pass by Mayor Palma Gil's house and he was informed by the Mayor that the trucks were entrusted to Roger.

"Rogelio Bacalla is a driver by occupation. As of April, 1981, he was a driver of an ISUZU cargo truck bearing Plate No. T-RD-904 which is one (1) of two (2) cargo trucks of RPG Trucking owned and operated by Mayor Restituto Palma Gil. The driver of the other truck which is a HINO was Eliseo Gania. He and Eliseo Gania are paid on a percentage basis: 25% of the net income of the truck in case the charterer is a private person, and 30% if the hauling is for the government. Government hauling contracts are entered into by Mayor Palma Gil, owner of the trucking business. One such contract was sometime in April 23, 1981, wherein Mayor Palma Gil was authorized by the Property Custodian of the Office of the Highway District Engineer at Mati, Davao Oriental to withdraw 1,320 bags of cement from the Bacnotan Consolidated Industries, Inc. in Davao City for use in the concreting of San Salvador Street, Caraga, Davao Oriental (See Exhibit 10). In fulfillment of the contract, he made six (6) trips to Davao City during the month of May, 1981 carrying each time 200 bags of cement. Gate passes, like Exhibits Y, Y-1 and Y-2 were issued by the Property Custodian, Mr. Benjamin C. Ongteco, and at the Bacnotan Cement Industries, Inc., Delivery Receipts and Withdrawal Slips like Exhibits Z, Z-1, Z-2 and Z-3 are signed by him. The government paid P1,600.00 for every load of 200 bags which was collected by Mayor Palma Gil, owner of the cargo trucks, through his checker, Teody Selerio.

"He ceased to be a driver of Mayor Palma Gil when he received a note (See Exhibit BB) dated May 2, 1982 ordering him to hand over the Isuzu truck to Rolly Tumandao. In obedience to the note, he delivered the truck to Rolly Tumandao who signed a receipt for it on May 4, 1982 (See Exhibit AA). And to prove that he was a driver of Mayor Palma Gil, there is a certification addressed to him as driver of RPG Trucking, informing him that Teodorico Selerio has been reinstated as checker (See Exhibit CC). (pp. 67-70, G.R. No. 73642)

The mayor was convicted for violating section 3(h) of the Anti-Graft Law, to wit:

"SEC. 3. Corrupt Practices of Public Officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby

declared to be unlawful:

xxx xxx xxx

x x x"(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest."

This section contemplates actual intervention in the transaction in which the accused has financial or pecuniary interest in order that liability may attach. (See *Trieste, Sr. v. Sandiganbayan*, 145 SCRA 508 [1986]) This does not appear clearly in the instant case. The contract to haul cement and other materials was given to Iturralde not by the mayor but by Roger Bacalla. Nowhere in the testimony of Roger Bacalla did he categorically state that the mayor authorized him to award the contract to Iturralde. Iturralde, on the other hand, repeatedly stated that he never had direct contact with the mayor as regards the contract and that it was Bacalla who told him that the mayor awarded the contract to him. Iturralde only assumed the authority of Bacalla on the belief that the mayor entrusted his cargo truck to Bacalla.

On the other hand, petitioner Palma Gil admitted that he gave one of his cargo trucks to Bacalla for the latter's use in his charcoal business on condition that Bacalla should maintain the truck and haul, free of charge, the products of his farm. He testified that he used his trucks to carry on his private business before he became mayor; and that he sent a checker to check on Bacalla's business transactions and for fear that his truck may be apprehended by the TRAFCON because said truck was only for private use, he got back the truck. However, he denied 1) Bacalla's claim of having hauled the government cement from Davao City to Caraga with the use of his trucks and with him (the mayor) "receiving" a certain percentage from the parcels or from the payment received by Bacalla; 2) having any arrangement with any cement factory in Davao City or the office of the district engineer in Mati for the hauling of cement allotted to Caraga; and 3) having any account with any Shell gasoline station in Davao City.

Considering the defense testimony and Iturralde's testimony that he never directly had any transaction with the mayor as regards the hauling contract plus Bacalla's unexplained silence on whether or not he was authorized by the mayor to transact business with Iturralde, there arise reasonable doubts as to the mayor's culpability for violating section 3(h) of the Anti-Graft Law.

One important factor overlooked by the respondent court in appraising the testimonies of prosecution and defense witnesses is the political or partisan motivation behind the filing of charges. While political differences may prod some persons to reveal the commission of offenses which may, otherwise, remain hidden, it is also true that partisan considerations may taint the testimonies of witnesses who want to put down a political opponent at all costs. Evidence pro and con should, therefore, be more carefully weighed against each other. As pointed out by Mayor Palma Gil, he ran under the banner of the Mindanao Alliance against the chosen KBL candidate. The vice-mayor whom he charges with active interest in his being convicted and who would become mayor in his stead is a KBL stalwart. Obviously, the petitioner was not in the good graces of the powers that be at the time. Ferrando, who filed the charges as a taxpayer interested in the proper disbursement of public funds was shown to be a delinquent taxpayer.

The petitioners state that funds for construction projects in distant municipalities like Caraga are slow in coming. Therefore, local officials have to be more resourceful and should show more initiative. The bridges, mini-grandstand, shade house, and stage park had to be rushed because Governor Rabat and the whole Sangguniang Panlalawigan were going to hold a session with the Sangguniang Bayan of Caraga immediately before the town fiesta on July 16, 1981. In the light of the evidence in these cases, we agree with the petitioners that the Sandiganbayan overlooked matters of substance which engender reasonable doubt as to the guilt of the

petitioners.

WHEREFORE, the instant petitions are GRANTED. The decision rendered by the Sandiganbayan in Criminal Cases Nos. 9968, 9969, 9970 and 9971 finding the petitioners guilty as charged is hereby SET ASIDE and reversed. A new judgment is rendered ACQUITTING the petitioners of the offenses charged against them on grounds of reasonable doubt with costs de officio.

SO ORDERED.

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

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