

**ARTURO QUIZO, PETITIONER, VS. THE HON. SANDIGANBAYAN,
REPRESENTED BY HON. FRANCIS E. GARCHITORENA, LUCIANO A.
JOSON, RAMON V. JABSON, RESPONDENTS.**

G.R. No. 77120. April 06, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

In this petition for certiorari, petitioner Arturo Quizo assails the resolution of the respondent Sandiganbayan in Criminal Case No. 9777 promulgated on September 23, 1986 which denied the motion to dismiss filed by the Tanodbayan as well as the resolution of October 22, 1986 which denied the motion for reconsideration thereto. Petitioner contends that said resolutions were rendered without or in excess of jurisdiction and/or with grave abuse of discretion.

It appears that after an audit conducted by the Commission on Audit on September 13, 1983, petitioner, the Money Order Teller of Cagayan de Oro Post Office, was found to have incurred a shortage in his cash and other accounts of P17,421.74, as follows:

Vales granted to various
employees but disallowed
P16,720.00
Accommodated private checks
700.00
Actual cash shortage
1.74

P17,421.74

On the same day, petitioner reimbursed the amount of P406.18; three days thereafter, P10,515.56; and on September 19, 1983, the balance of P6,500.00.

Notwithstanding full restitution, an information for malversation of public funds against petitioner was filed by the Tanodbayan before the Sandiganbayan. On a motion for reinvestigation and/or reconsideration, the Tanodbayan filed a motion to dismiss on the following grounds:

"1.

No damage was inflicted on the government as there was full restitution of the malversed funds within a reasonable time;

2.

The accused never pocketed the money, the shortages, it is admitted, being 'vales' of his co-employees." (Annex A, p. 14, Rollo).

On September 23, 1986, the Sandiganbayan denied the prosecutor's motion to dismiss. It ruled that damage to the government is not an essential element of the crime of malversation and that restitution of the malversed funds before the filing of a complaint is neither a defense that would exempt the offender from criminal liability nor a valid ground for dismissal. A motion for reconsideration was filed but it was denied on October 22, 1986. Hence this petition.

Petitioner questions the propriety and advisability of the Sandiganbayan's actuation in seeming to substitute its judgment on matters within the discretion of the prosecution. Petitioner further argues that there are sufficient and compelling reasons for the dismissal of the criminal case, namely:

- There was no criminal intent, no malice or any animus lucrandi;
- If there was negligence, the same was not inexcusable;
- There was full restitution made within a reasonable time; and
- Similar cases were dismissed at the Sandiganbayan and Tanodbayan level on the ground of restitution.

The petition is impressed with merit.

In the case of *People vs. Pineda*, 20 SCRA 748, the Court ruled:

"A prosecuting attorney, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But we must have to recognize that a prosecuting attorney should not be unduly compelled to work against this conviction. In case of doubt, we should give him the benefit thereof. A contrary rule may result in our courts being unnecessarily swamped with unmeritorious cases. Worse still, a criminal suspect's right to due process — the sporting idea of fair play — may be transgressed.

" x x x The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the Fiscal's should normally prevail. x x x" (italics supplied.)

In *Alberto vs. de la Cruz*, 98 SCRA 406, reiterated in *Bautista vs. City Fiscal of Dagupan*, 131 SCRA 132, the Court further held:

"It is the rule that a fiscal by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to support the allegations thereof. Although this power and prerogative of the Fiscal, to determine whether or not the evidence at hand is sufficient to form a reasonable belief that a person committed an offense, is not absolute and subject to judicial review, it would be

embarrassing for the prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case."

Against the foregoing and considering that after a reinvestigation conducted by a prosecutor, no less than the Tanodbayan himself directed the dismissal of the case based on findings that "it is clear that the accused never pocketed the money" and that "the shortage were vales of co-employees " (Annex "D", p. 9, Rollo), the Court is inclined to sustain petitioner's contention that The Sandiganbayan gravely abused its discretion when it refused to grant the motion to dismiss. It is not fair to compel the prosecutor to secure the conviction of an accused on evidence which in his opinion, is insufficient and weak to establish even a prima facie case.

Besides, the Court is convinced that there is no sufficient evidence to show a prima facie case against petitioner.

Article 217 of the Revised Penal Code provides that 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. Hence, an accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily (De Guzman vs. People, 119 SCRA 337). This is because the law establishes a presumption that mere failure of an accountable officer to produce public funds which have come into his hands on demand by an officer duly authorized to examine his accounts is prima facie evidence of conversion. However, the presumption is merely prima facie and a rebuttable one. The accountable officer may overcome the presumption by proof to the contrary. If he adduces evidence showing that, in fact, he has not put said funds or property to personal use, then that presumption is at an end and the prima facie case destroyed (US vs. Catolico, 18 Phil. 504).

In the case at bar, petitioner successfully overthrew the presumption of guilt. He satisfactorily proved that not a single centavo of the missing funds was used by him for his own personal interest, a fact conceded by the Tanodbayan. The bulk of the reported shortage actually referred to the items disallowed by the Audit Team representing cash advances extended to co-employees. In fact, evidence disclosed that the itemized list of the cash advances (Annex "B" of Motion for Re-Investigation and/or Reconsideration, p. 31, Rollo) was verified and found to be correct by an Auditing Examiner. Petitioner explained that the granting of the cash advances was done in good faith, with no intent to gain and borne out of goodwill considering that it was a practice tolerated in the office. Such being the case, negligence evidentiary of malice or intent to defraud the government cannot be imputed to him. Also to be considered is the circumstance that the actual cash shortage was only P1.74 which, together with the disallowed items, was fully restituted within a reasonable time from date of audit.

Significantly, in the recent case of Villacorta vs. People, G.R. No. 68268, November 12, 1986, the Court acquitted the accused, the municipal treasurer of Pandan, Catanduanes, of the crime of malversation of public funds on grounds that he did not put the missing funds to personal uses, that his having "allowed others to freely participate of the chits/vouchers" was a practice which seemed to have been tolerated even during the time of his predecessor and that there was no negligence approximating malice or fraud because the wrong payments were made in good faith.

WHEREFORE, the writ of certiorari is granted and the resolutions of the respondent Sandiganbayan dated September 23, 1986 and October 22, 1986 are SET ASIDE. Criminal Case No. 9777, entitled "People of the Philippines vs. Arturo C. Quizo" is hereby DISMISSED. No costs.

SO ORDERED.

Teehankee, C.J., Yap, Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Melencio-Herrera, J., on leave.

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