

RICHARD V. PETRALBA, PETITIONER, VS. THE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 81337. August 16, 1991

Ponente: PARAS, J.

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PARAS, J.:

This Petition for Review on Certiorari seeks the reversal of the Decision* of the Sandiganbayan promulgated on October 5, 1987 in Criminal Case No. 9390 entitled "The People of the Philippines vs. Richard V. Petralba" convicting herein petitioner of the crime of Malversation of Public Funds penalized under Article 217 of the Revised Penal Code and the Resolution of the Sandiganbayan dated December 15, 1987 denying the petitioner's motion for reconsideration.

Abstract from the records are the following facts:

Herein petitioner Richard V. Petralba was designated Officer-in-Charge of the Municipal Treasury of Alcoy, Cebu on October 23, 1979. Fourteen (14) months after designation, petitioner's cashbook balance was audited by Auditors Constantino Alagar and Rene Flores. He was found short of P28,107.00. Petitioner, theretofore, was charged with, and convicted of, 31 counts of "Malversation of Public Funds," "Illegal Use of Public Funds" and "Falsification of Public Documents." Petitioner was granted probation and continued his function as Municipal Treasurer of Alcoy, Cebu, from December 23, 1980 until he was succeeded by Mrs. Lilia Suico on March 15, 1981.

Petitioner's cash and accounts from the period of December 23, 1980 to March 15, 1981 were audited by Leticia Trazo and Flora Pacana. Petitioner was found short in the amount of P50,447.06 which was arrived at as follows:

GENERAL INFRASTRUCTURE TRUST

FUND

FUND

FUND

SEF

TOTAL

Balance last examination

12/23/80

ADD: Receipts, collections, w/ drawals Dec. 24-31, 1980

January, 1981

February, 1981

March, 1981

Total

LESS: Disbursements:

Dec. 24-31, 1980

January, 1981

February, 1981

March, 1981

Balance as of March 15, 1981

(Date of turnover)

P10,336.91

P1,264.22

12,515.04

23,479.07

4,418.65

41,676.98

P52,013.89

2,962.93

4,041.94

5,019.00

293.60

12,317.47

P39,696.42

VVVVVVVVVVV

P302.07

P --

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P302.07

P --

1,769.84

1,768.84

1,000.00

4,539.68

P(4,237.61)

vvvvvvvvvvvv

P35,513.48

P --

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P35,513.48

764.40

3,383.98

16,402.71

120.00

20,671.09

P14,842.39

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P145.86

P --

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P145.86

P --

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P145.86

VVVVVVVVV

P46,298.32

P1,264.22

12,515.04

23,479.04

4,418.65

41,676.98

P87,975.30

3,727.23

9,195.76

23,191.55

1,413.60

37,528.24

P50,447.06

vvvvvvvvvv

(pp. 106-107, Rollo)

On December 4, 1981, the Trazo Team sent a letter (Exhibit "H") to the petitioner demanding the turn-over of the latter's cash accountability.

Vouchers amounting to P43,468.84, which were previously allowed by Auditors Constantino Alagar and Rene Flores, were presented by petitioner to Auditors Trazo and Pacana. Only the amount of P21,348.87 was allowed reducing the petitioner's accountability to only P29,098.19 while the remaining vouchers amounting to P22,119.97 were disallowed for want of administrative approval.

On July 30, 1984 herein petitioner, Richard V. Petralba, was charged with Malversation of Public Funds, in violation of Article 217, Revised Penal Code, allegedly committed as follows:

"That on the 5th day of November, 1981 and for some time prior thereto, in the Municipality of Alcoy, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a Deputy Provincial and Municipal Treasurer then designated as the Officer in Charge of the Municipal Treasury of Alcoy, Cebu, did then and there willfully, unlawfully and feloniously take and misappropriate the amount of P29,098.19 representing various receipts and collection and, therefore, public funds, which he had custody or control by reason of the duties of his office and for which he was accountable, and despite repeated demands for him to produce or restitute the amount, failed and still fails to do so, to the damage and prejudice of the government in the amount aforestated.

In violation of Article 217 of the Revised (Penal) Code."

(Rollo, "Information," pp. 21-22)

During the pre-trial inquest, the parties stipulated and agreed on the following facts:

"(A) The accused admits that he had been appointed Deputy Provincial and Municipal Treasurer of Alcantara, Cebu as shown by Exh. A;

"(2) That on October 23, 1979, he was designated Officer-in-Charge of the Municipal Treasury of Alcoy, Cebu and acted as such until March 15, 1981 as shown by Exh. B;

"(3) Accused also admits that on March 15, 1981 the office of the accused as Officer-in-Charge of the

Municipal Treasurer of Alcoy, Cebu was turned over to Mrs. Lilia Suico;

"(4) That accused admits that after the turn-over of the office to Suico the statement of his cash accountability was prepared and signed by him as shown in Exh. C and C-1;

"(5) Accused admits that on November 5, 1981 COA Examiners Leticia Trazo and Flora Pacana conducted an examination on the cash and accounts of his (sic) as shown by the Reports of Examination for General Funds marked Exh. D, Trust Funds marked Exh. E, Infrastructure Funds as Exh. F and Special Educational Funds marked as Exh. G and that certified the findings of the COA examiners as reflected in said report and his signatures already marked as Exhs. D-1, F-1 and G-1;

"(6) Likewise, accused admitted that on December 7, 1981, a letter of demand was served on and received by him as reflected in Exh. H, as shown by his signature acknowledging receipt thereof;

"(7) Accused admits that COA Examiners Leticia Trazo and Flora Pacana were duly authorized to conduct an examination of the cash and accounts of the accused as shown by Exh. I;

"(8) That accused admits that he was originally found short in the amount of P50,447.00 as shown by Exh. J, however, after he submitted vouchers which were allowed, his shortage was reduced to P29,098.19 as shown by Exhs. J-1 and K;

"(9) That accused denies that up to the present he has not yet paid the amount of P29,098.19, and which he will explain on the witness stand."

(Rollo, Annex "B", pp. 24-25)

In view of the admission of the petitioner that he was short of P29,098.19, the prosecution waived the presentation of testimonial evidence. Instead, it offered its documentary evidence, marked as Exhibits "A" to "K", and rested its case. The petitioner presented testimonial and documentary evidence.

The respondent Court found that the vouchers disallowed by the Trazo team in the amount of P22,119.19 were either supported by invoices or receipts or duly signed by respective payees. Thus, the amount of P6,978.22 out of the P29,098.19 remained unaccounted for. The respondent Sandiganbayan rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Richard V. Petralba guilty beyond reasonable doubt of the crime of Malversation of Public Funds described in and penalized under Article 217 of the Revised Penal Code, Appreciating in favor of the accused the mitigating circumstance of Voluntary Surrender, there being no aggravating circumstance adduced and proven by the prosecution, the accused should be, as he is, hereby sentenced to the indeterminate penalty of, from Six (6) Years and One (1) Day of prision mayor, as minimum, to Ten (10) Years and One (1) Day of prision mayor, as maximum, with the accessory penalties of the law; to pay a fine in the sum of P6,978.22, without subsidiary imprisonment in case of insolvency; to suffer the penalty of perpetual special disqualification; to indemnify the government in the aforesaid sum of P6,978.22; and to pay the costs.

SO ORDERED." (pp. 68-69, Rollo)

Sandiganbayan denied the motion for reconsideration filed by petitioner dated December 15, 1987. Hence, this petition.

Petitioner raises the following issues:

"I

WHETHER OR NOT THE PETITIONER WAS PROPERLY AUDITED AND WHETHER EXHIBITS '11' TO '11-M' WERE INCLUDED IN THE SETTLEMENT OF THE ACCOUNT OF THE PETITIONER.

"II

WHETHER OR NOT THE PETITIONER HAS ADDUCED EVIDENCE TO PROVE THAT THE MISSING FUNDS WERE NOT PUT TO HIS PERSONAL USE.

On August 10, 1989, while this case was pending before Us, petitioner's counsel filed a manifestation that his client, Richard V. Petralba, had died, evidenced by a death certificate dated July 10, 1989. (Rollo, Annex "A" of Manifestation, p. 173).

Under Article 89 of the Revised Penal Code, death of the convict extinguishes criminal liability. In view of the fact that one of the juridical conditions of penalty is that it is personal. *Actio personalis moritur cum persona*; *actio peonalis in haeredem non datur, nisi forte ex damno locupletior haeres factus sit*. (A personal right of action dies with the person. A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.)

Criminal liability does not only mean the obligation to serve the personal or imprisonment penalties but it also includes the liability to pay the fines or pecuniary penalties. Pecuniary liability is extinguished only when the death of the offender occurs before final judgment. (Art. 89(1), Revised Penal Code). In the case at bar, petitioner Richard V. Petralba died pending appeal and before any final judgment therein. Hence, the death of Richard V. Petralba extinguished his personal and pecuniary (such as the fine) liabilities.

Though the death of an accused-appellant during the pendency of an appeal extinguished his criminal liability, his civil liability survives. Extinction of criminal liability does not necessarily mean that the civil liability is also extinguished. In *People vs. Navoa*, 132 SCRA 410, and in *People vs. Sendaydiego*, 81 SCRA 120, We ruled that only the criminal liability (including the fine, which is pecuniary, but not civil) of the accused is extinguished by his death, but the civil liability remains. The claim of the government for the civil liability survives Petralba but only if the offense can be proved.

The Supreme Court continues to exercise appellate jurisdiction over the petitioner's possible civil liability for the money claims of the government arising from the alleged criminal acts complained of, in much the same way as when no criminal action had been filed. No separate civil action need be instituted (*People v. Sandaydiego*, *supra*).

Going now into the civil liability of the accused, be it noted that he claimed that no shortage ever occurred because:

1. The discrepancy between Exhibit "4" prepared by the accused and Exhibit "H" prepared by the Trazo team casts doubt on the veracity of the latter. Petitioner's total collection for the month of January, 1981 in Exhibit "4" appears to be P13,515.04 while Exhibit "H" indicates a collection of P12,515.04, or a difference of P1,000.00. For the month of February, 1981 petitioner's collection, as reflected in Exhibit "4", is P21,532.36, while Exhibit "H" indicates a collection of P23,479.07.00, or a difference of P1,946.71.

2. The respondent Court failed to include Exhs. "11" to "11-M" representing the amount of P6,835.48 to settle the account of petitioner.

The above allegations are devoid of any merit.

Exhibit "4" was prepared by the petitioner to apprise Suico of his transactions from January 1, 1981 to March 15, 1981. Due to the inveracity of Exhibit "4", an audit was performed, the result of which is listed in Exhibit "H". Evidently, Exhibit "4" is self-serving and unreliable and, therefore, cannot prevail over the official findings of the Trazo team contained in Exhibit "H". Besides, petitioner himself acknowledged and signed the official findings of the Trazo team. He is estopped from impugning the veracity of Exhibit "H".

Equally baseless is the claim of the petitioner that Sandiganbayan did not consider his Exhibit "11" to "11-M". It is admitted by petitioner that Exhibit "11" to "11-M" were among the vouchers listed in Exhibits "2-A" and "2-B" allowed by the Alagar team and by the Trazo team. (Memorandum for the accused, p. 11). Auditor Alagar declared that Exhibits "2-A" and "2-B" were taken into account during his audit. (Decision of Sandiganbayan, p. 7, Rollo, p. 58). Thus, the amount appearing in Exhibits "11" to "11-M" was included in the amount of P22,119.97 allowed by the Trazo team in reducing the original unaccounted amount of P50,447.06 to P29,098.19. (Exhibit "8-B").

Petitioner alleges that Exhibit "2", indicating a total of P10,296.47, should total P10,371.47. His argument is based on the non-inclusion of the amount of P75.00. However, a perusal of Annex "B" of petitioner's Reply (Rollo, p. 126) indicates that the name of creditor opposite the amount of P75.00 was erased, and the same was not presented by petitioner as part of his Exhibit "7". Thus, the Trazo team did not commit any abuse of discretion in their failure to credit P75.00.

Petitioner was able to explain the amount of P22,119.97 out of the shortage of P29,098.19, but he failed to explain the remaining balance of P6,978.22, thereby giving rise to the conclusion that he had spent such amount for his personal use.

PREMISES CONSIDERED, the estate of the deceased petitioner is hereby sentenced to indemnify the government in the amount of P6,978.22. With costs.

SO ORDERED.

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

* Penned by Associate Justice Regino Hermosisima, Jr. and concurred in by Associate Justices Romeo M. Escareal and Augusto M. Amores.

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