

LUCILYN T. ZAMBRANO, PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 82067. April 10, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision***dated January 8, 1988 of the respondent Sandiganbayan in Crim. Case No. 2559 entitled “People of the Philippines v. Lucilyn Zambrano y Tesoro” which convicted petitioner of malversation of public funds.

The petitioner was charged before the Sandiganbayan with malversation of public funds, allegedly committed as follows:

“That on or about and during the period from January 20, 1976 to January 24, 1980, in Cotabato and within the jurisdiction of this Honorable Court, the accused LUCILYN T. ZAMBRANO, being then employed at the National Grains Authority, now the National Food Authority as Cashier I and designated as Special Disbursing Officer at Cotabato City and as such, accountable for the public funds collected and received by reason of her position, did then and there willfully, unlawfully and feloniously and with grave abuse of confidence, misappropriate, misapply and embezzle and convert to her own personal use and benefit from said funds the sum of ONE MILLION TWO HUNDRED SEVEN THOUSAND EIGHT HUNDRED THIRTY FIVE PESOS AND NINETEEN CENTAVOS (P1,207,835.19), Philippine Currency, to the damage and prejudice of the National Grains Authority, now the National Food Authority.

“ALL CONTRARY TO LAW.” (Original Record, p. 1; Rollo, pp. 6-7).

On August 28, 1986, the Sandiganbayan rendered a decision convicting petitioner for malversation of public funds (Original Record, pp. 301-341) but petitioner filed a motion for new trial (Ibid., pp. 348-350) and said motion was granted in a resolution issued by the Sandiganbayan on October 13, 1986 (Ibid., pp. 363-366).

Upon arraignment, the accused-petitioner Lucilyn T. Zambrano entered a plea of not guilty to the crime charged (Ibid., pp. 28; 30-31).

The trial of the case ensued.

The prosecution’s lone witness, Carlito Capinpin, an auditor of the COA assigned in National Food Authority (NFA) whose duties were to pre-audit, and post-audit claims and disbursements of accountable officers in said office, declared that he conducted an audit examination of the accounts and accountabilities of the accused comprising the period from January 20, 1976 to January 24, 1980 after receipt of a copy of “Cash on Hand Per Count Report” made by the resident auditor. He and together with the other members of the special audit team created by NFA who conducted the investigation, divided the work by the assignment of a particular account to audit to each of them and came up with a report, the results of which may be summarized in the following

manner:

The cash advances of herein petitioner under the Cereal Procurement Fund (CPF) as Special Disbursement Officer have a total of P10,543,165.56 while her cash disbursements amounted to P10,115,620.49, leaving a shortage of P427,545.07. Her operational funds from January 20, 1976 to January 24, 1980 amounted to P13,019,344.78 while credits to her accountability totalled P12,442,951.82, thus leaving a shortage of P576,392.96. Her record of collections and deposits for the same period shows that she had debits to her accountability in the total amount of P13,305,659.18, whereas the credits thereto amounted to P13,101,762.02. Thus, there is a shortage of P203,897.16. All these shortages reached a total of P1,207,835.19. (Hearing of August 3, 1981, TSN, 9-21; Hearing of February 28, 1984, TSN, pp. 93-97).

When asked to explain the entries in the Audit Examination Report, Capinpin clarified each and every item under investigation, such as: Cereal Procurement Fund which is the summary of the accountabilities of the accused as special disbursing officer for the period covered, July 30, 1977 to January 24, 1980. Debit to accountability refers to the cash advances and replenishments made by the special disbursing officer to serve as her fund for the purchase of palay in connection with the procurement operation of the NFA. The advances were in the form of cash supported by cash vouchers, replenishment vouchers which are also supported by purchase receipts. These purchase receipts were the actual expenses or disbursements made by the special disbursing officer for the procured palay in her capacity as special disbursing officer (Hearing of February 28, 1984, TSN, pp. 66-68).

In view of the shortage found, a demand letter was sent to Lucilyn Zambrano dated July 2, 1980 requiring her to reconstitute or pay the said shortage. To date no restitution has been made by the accused (Hearing of August 3, 1981, TSN, pp. 9-21).

On clarificatory questions made by the Court, Capinpin admitted that the report submitted by the team does not contain references or cross references to the pertinent supporting documents. What was embodied in the transmittal letter was the total accountability on the net shortage of the accused. The summary of accountability of the accused, both as disbursing officer and as special collecting officer are duly supported by general schedules with references to their respective amount (Decision, Crim. Case No. 2559, Rollo, p. 24).

He claimed that he personally examined all the entries contained in the cash books, despite the absence of his signature to show that he had actually made examinations thereon. In going over the cash books he counter-checked them with entries made by the accused herself, under the columns "Treasury Warrant", "Journal Voucher" or "Official Receipts" as against the documents themselves, and found that all the entries appearing in the cash books have their corresponding vouchers (Hearing of November 26, 1984, TSN, pp. 155-156).

Capinpin further declared that (a) the number of the vouchers representing cash advances or replenishments to the accused are all reflected in the schedules attached to the audit report; (b) all vouchers recorded in the registers were obtained by the team and duly accounted for; (c) the vouchers were not only checked but the audit team saw to it that the supporting papers were complete; and (d) the audit team followed COA standard procedures in conducting their examination (Decision, Criminal Case No. 2559, Rollo, p. 62).

On the other hand, the defense presented Cesario Mateo as an expert witness, who is a Certified Public Accountant (CPA) and private practitioner. Long before he became a free lancer, he was connected with the government, employed as Auditing Clerk of the Rice and Corn Administration (RCA) now NFA, then as a proof clerk of the First United Bank, then with the COA as Assistant Auditor until he worked abroad as Assistant Account of Bauchi State Investment and Development Corporation in Nigeria which is a government corporation.

Mateo claimed that he, together with a former COA Auditor and personnel of the Sandiganbayan, started

examining and reviewing ten (10) boxes of exhibits of the prosecution late in September and ended early in January 2, 1986. Thereafter, he submitted a written report to Atty. Ontimare, with a summary of his findings and observations (Hearing of January 29, 1986, TSN, pp. 163-171).

Cross-examined on his report, particularly on his statement that the cash advances amounting to P1 million pesos were neither supported by cash vouchers nor check vouchers, he explained that nowhere in the documents submitted by the prosecution was he able to find the particular vouchers in support thereof and hence should not be included as cash advances. Confronted with Exhibits “YYYYY-1” to “YYYYY-20” pertaining to twenty (20) check vouchers in the amount of P50,000.00 each with a total of P1 million pesos, he denied having seen them. However, his examination shows that the accused made disbursements amounting to more or less P1 million pesos but he could not determine the total amount of disbursements as well as the total accountability of the accused. According to his report, more than P800,000.00 was overstated.

Specifically, Mateo pointed out that the accused instead of having a shortage of P1,207,835.19 as determined by the audit team, should be credited with an average of P1,912,065.00 as follows:

P 1,000,000.00 -

not supported with cash vouchers and check vouchers;

180,004.20 -

overstatement of cash advances for Acct. No. 805 (SDO)

113,652.36 -

disallowed cash items

24,200.00) -

1,143.45) -

no official receipts and Abstract of Collections or Report of Collections

592,964.99 -

over deposits for Acct. No. 805 (CPF)

P 1,912,065.00

Otherwise stated, the government owes the accused P704,229.81 (Hearing of April 14, 1986, TSN, pp. 191-197; Decision, Criminal Case No. 2559, pp. 48-49; Rollo, p. 62).

As previously stated, accused’s testimony was taken during the new trial granted by the Court after she had waived her right to testify in her defense.

Lucilyn T. Zambrano declared that since September 1, 1966 she occupied various positions in the defunct RCA, now NFA, during which time she was never charged administratively or criminally nor was her attention ever called to any anomaly or irregularities in the discharge of her duties.

On February 6, 1975, she was appointed Cashier I on a permanent basis at the NGA National Branch, allegedly offered to her by Director Juanito Cabalu, despite the fact that she had no units in accounting but only in nursing.

Nevertheless, she accepted the position as an opportunity for promotion (Hearing of February 5, 1987, TSN, pp. 224-227).

As Cashier I, her duties were to collect and disburse funds. While her actual station was in Cotabato City, Regional Office, her area of responsibility includes Maguindanao province.

As a collecting officer, she collects the proceeds of the sale of cereals like rice, corn and sorgum. Although she did not actually participate in the selling of cereals, the proceeds of the sale were turned over to her which were evidenced by proper receipts and these receipts together with the amounts that she received were entered by her in the cash books. She pre-signed the receipts she issued especially in the remote areas in the different buying stations and then she collected the proceeds from her aides as against the receipts issued by her. The transactions made were paid either in cash by direct retailers or consumers or in checks by government agencies or offices. These checks were placed in the collection report, made payable to the NGA, main office, and deposited in the Philippine National Bank (PNB) on the following day.

As Special Disbursing Officer (SDO), she went out to Cotabato City and to Maguindanao for the purpose of disbursing funds in her accountability. She submitted her periodic report weekly to the accounting section. These reports were denominated as Collection and Disbursement reports. The former included the sales of cereals while the latter was divided into many accounts. During this period, she was also audited in her accountabilities and there was no shortage found (Hearing of February 5, 1987, TSN, pp. 233-243).

During the fiscal year 1978, Auditor Abundo of the NGA, called her to his office and he told her that her account was liquidated by him and he found a shortage of ten thousand (P10,000.00) pesos in the Cereal Procurement Funds. Aside from the fact that she was still under liquidation at that time, the finding of Abundo was not reflected in any report nor was any official action taken thereon.

Nevertheless, Abundo offered to help her with the shortage, for a certain amount. And so she gave him P5,000.00 from her personal funds and later for cash advances of P200,000.00 from the office funds for which Abundo did not sign receipts nor did he liquidate them.

Aside from Abundo, she gave also cash advances to Regional Director Juanito Cabalu amounting to P80,000.00 for his representation expenses, salaries, fish to be sent to Malacanang and also personal expenses. These cash advances were covered by receipts but Cabalu was able to liquidate the amount of P70,000.00 only which she turned over to Imelda Marquez, Cashier of the NGA, after she was investigated by the MSD and she did not know if the MSD was aware of the unliquidated cash advances of Cabalu. She was informed later that the investigation conducted by MSD revealed that she incurred a shortage of P500,000.00, more or less (Hearing of February 6, 1987, TSN, pp. 253-270).

She also admitted that she has a cash advance of one million pesos in one voucher only but she did not use this amount for her own personal use. This cash advance was given to Manager Serio Pituc of Sultan Kudarat on the instructions of Director Cabalu. The one million pesos cash advance was recorded in her name, then it was given to Manager Pituc, who signed the original of the voucher in the presence of the cashier of Sultan Kudarat and Mrs. Marquez. Although she was furnished a copy of the report of the audit team finding her short of one million plus, she was not given a chance to explain her position (Hearing of May 28, 1987, TSN, pp. 285-291).

On cross-examination, she admitted that she cannot validly disburse an amount of P1 million pesos because her disbursement ceiling was only P150,000.00 (Hearing of May 29, 1987, TSN, pp. 296-302).

On re-direct, she explained that the cash advances given to Cabalu were not credited in her favor and that the cash advance of P1 million pesos in one single transaction despite her cash disbursement ceiling of P150,000.00 was

approved by the Regional Director and it passed through accounting procedures leading her to presume that the voucher was in order (Hearing of May 29, 1987, TSN, pp. 303-306).

In reply to the questions asked by the Court, she said that she gave cash advances to Abundo and Cabalu, Regional Auditor and Regional Director of the NGA respectively ranging from the amount of P200,000.00 to P1 million pesos despite their failure to execute the proper documents or receipts out of fear, that she might be kicked out of her job or transferred to another station. On the other hand, she believes that she will not be held liable for the shortage because these are circumstances that would justify or exempt her from criminal liability (Hearing of May 29, 1987, TSN, pp. 307-312).

On January 8, 1988, the Sandiganbayan rendered its decision, the decretal portion of which reads as follows:

“WHEREFORE, judgment is hereby rendered finding accused Lucilyn Zambrano y Tesoro GUILTY beyond reasonable doubt as Principal in the offense of Malversation of Public Funds as defined and penalized in Article 217, paragraph 4, of the Revised Penal Code, and there being no modifying circumstance in attendance, after applying the Indeterminate Sentence Law, hereby sentences her to suffer the indeterminate penalty ranging from TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of reclusion temporal as the minimum, to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY, likewise of reclusion temporal as the maximum; to pay a fine of P1,207,835.19 equal to the funds malversed; to indemnify the Government of the Republic of the Philippines in the same amount of P1,207,835.19, and to pay the costs of this action.

“SO ORDERED.” (Rollo, p. 70).

Hence, this petition.

The Court En Banc of this Court in its resolution dated November 15, 1988 gave due course to the petition and considered this case submitted for decision (Rollo, Resolution, p. 109).

The main issue in this case is whether or not the guilt of the accused-petitioner had been established beyond reasonable doubt.

The petition is devoid of merit.

After a careful study of the records of this case, including the detailed testimony of the witnesses, no cogent reason can be found to depart from the conclusion reached by the Sandiganbayan that petitioner had indeed been negligent in the handling of the funds which had been turned over to her.

In the crime of malversation, all that is necessary for conviction is proof that the accountable officer had received the public funds and that he did not have them in his possession when demand therefore was made and he could not satisfactorily explain his failure so to account. An accountable public officer may be convicted for malversation even if there is no direct evidence of personal misappropriation, where he has not been able to explain satisfactorily the absence of the public funds involved (*De Guzman v. People*, 119 SCRA 337 [1982]; *Bacasnot y Callao v. Sandiganbayan*, 155 SCRA 379 [1987]).

Under Article 217 of the Revised Penal Code, there is prima facie evidence of malversation where the accountable public officer fails to have duly forthcoming any public funds with which he is chargeable upon demand by duly authorized officer. As this Court has pointed out, this presumption juris tantum is founded upon human experience (*Estepa v. Sandiganbayan*, 182 SCRA 269 [1990]) and shall be prima facie evidence that he/she has put such missing funds or property to personal use (*Corpuz v. People*, 194 SCRA 73 [1991]).

In the case at bar, petitioner was neither able to produce the missing amount of P1,207,835.19 nor adequately

explain her failure to produce that amount.

Petitioner failed to offer any convincing evidence to support her alternative claims that she did not incur any shortage in her accountabilities. She even tried to exculpate herself but in vain, by throwing blame on others for her failure to account for the missing money, making it appear that she was either acting under orders of her superiors or that she acted out of fear or duress, but as correctly found by the Sandiganbayan her testimonial evidence does not clearly or positively establish the legal or factual bases thereof. Among others, she knew that the supposed orders of her superior were not for a lawful purpose or even if lawful, as she claimed them to be, the means used to carry out said orders were not lawful. She admitted she did not use the proper official forms or procedures in doling out funds belonging to the government and more importantly she exceeded her cash disbursement ceiling for the disbursement of funds amounting to P150,000.00.

Her defense witness Mateo while pointing out that the missing cash advances including the P1,000,000.00 were not duly supported by check or cash voucher, failed or omitted to explain why they were posted in the cash books of the accused, in her own handwriting if she really did not receive them (Decision, Criminal Case No. 2559, pp. 49-52; Rollo, pp. 62-65).

Conversely, the audit examination made was based on petitioner's own cash books and all the checks and vouchers were duly checked and verified. In fact the People's witness declared that (a) the numbers of vouchers representing cash advances or replenishments to the petitioner are all reflected in the schedules attached to the audit report; (b) all vouchers recorded in the registers were obtained by the team and duly accounted for; (c) the vouchers were not only checked but the audit team saw to it that their supporting papers were complete; and (d) the audit team followed COA standard procedures in conducting their examination. As found by respondent court, the evidence presented by the prosecution in its totality is overwhelming and conclusive (Decision, Criminal Case No. 2559; p. 52; Rollo, p. 65).

Verily, the elements of the crime imputed to the petitioner in the information were duly established not only by the testimony of the prosecution's only witness but also by the documentary evidence offered.

Under the foregoing circumstances, it is evident that the defense has not successfully rebutted the prima facie presumption of malversation. The evidence of the prosecution is overwhelming and has not been overcome by the petitioner. The presumed innocence of the accused must yield to the positive finding that she malversed the sum of P1,207,835.19 to the prejudice of the public whose confidence she has breached.

PREMISES CONSIDERED, the petition is DENIED and the assailed decision of the Sandiganbayan is AFFIRMED in all respects.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.
Feliciano and Bellosillo, JJ., on leave.

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

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