

NENITA BABIDA Y ENCIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND THE SANDIGANBAYAN, RESPONDENTS.

G.R. No. 83946. September 29, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Before this Court is a petition filed under Rule 65 of the Rules, in the nature of a challenge against the decision of the Sandiganbayan.

The information alleges:

That on or about the 16th day of September, 1986 in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping each other the accused Nenita E. Babida being then employed as Acting Cashier of the Post Office at Tacloban City and as such, was accountable for moneys or funds of the Post Office, did then and there willfully, unlawfully and feloniously and with grave abuse of confidence defraud the Government by making it appear that said accused Nenita E. Babida was robbed or held up by the other coaccused "John Doe" and "Peter Doe" who are private persons, of P70,000.00 Philippine Currency which were funds of the Post Office and which the accused Nenita E. Babida was to deposit with the Development Bank of the Philippines as part of her duties as such Acting Cashier when in truth and in fact the alleged robbery was a fake or stage-managed and designed to provide as an effective cover or pretense for illegal use of such funds and once in possession of the moneys the said accused willfully and feloniously embezzle and misapply the total amount of P70,000.00 to the damage and prejudice of the Government in the aforesaid amount of P70,000.00.

Contrary to law.[1]

After trial, the respondent court returned a guilty verdict. The dispositive part of its decision states:

WHEREFORE, judgment is hereby rendered finding accused Nenita Babida y Encio GUILTY beyond reasonable doubt as principal in the offense of Malversation of Public Funds, as defined and penalized under Article 217, paragraph 4, of the Revised Penal Code, and favorably appreciating the mitigating circumstance of voluntary surrender without any aggravating circumstance in offset, and further applying the Indeterminate Sentence Law, hereby sentences her to suffer an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prison mayor, as the minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as the maximum; to further suffer perpetual special disqualification; to pay a fine of P69,721.64; to indemnify the Republic of the Philippines in the amount of P69,721.64 representing the amount malversed, and to pay the costs of this action.

SO ORDERED.[2]

Three legal fundamentals confront the Court in this case, to wit: (1) That the accused is presumed innocent until proven otherwise;^[3] (2) That the prosecution must rely on the strength of its own evidence and not on the weakness of that of the accused;^[4] and (3) That "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." [5]

Now, the Sandiganbayan, in handing the judgment of conviction, relied on the lone testimony of Jose Desamparado, then Tacloban City Auditor, as follows:

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The lone witness brought to the witness stand by the prosecution was Jose Desamparado, former City Auditor of Tacloban City, who conducted an audit examination on the accounts and accountabilities of the accused comprising the period from March 11, 1986 to September 16, 1986. As a result thereof, the accused was found short in the total amount of P69,721.64 consisting of collections of postal funds which the accused was not able to account for during the audit, hence, a letter of demand was sent to her on the same date to immediately produce the missing funds in her custody but which she was not able to do so up to the present (Exhibits C and C-1). Instead, she replied thereto on October 1, 1986, attaching thereto her affidavit explaining the circumstances why she incurred a shortage (Exhibits 1 and 2). [6]

By Mr. Desamparado's account -- that he conducted an audit of the accused, that he found her short of P69,721.64, and that upon demand, the accused failed to return the money -- it appears that the prosecution has established the accused's prima facie liability for malversation under Article 217 of the Revised Penal Code. And that being the case, rebuttal evidence (to rebut the presumption of culpability) devolved on the accused. In the case of *People v. Mingoa*, [7] it was held that a finding of prima facie evidence of accountability does not shatter the presumptive innocence the accused enjoys because before prima facie evidence arises, "certain facts [have still to be] proved." [8]

Yet, and as we indicated, the trial court can not depend alone on such an evidence, because, precisely, it is merely prima facie. It must still satisfy itself that the accused is guilty -- beyond reasonable doubt -- of the offense charged. Neither can it rely on the weak defense the latter may adduce.

The undisputed fact is that the City Auditor had found the accused short, as of September 16, 1986, of the sum of P69,721.64, a sum the latter could not or failed to return upon due demand. The latter's excuse, however, is that on the same date, September 16, 1986, on her way to deposit the money with the Development Bank of the Philippines, the same was purportedly stolen. According to her, she did not inform the City Auditor of it (the fact of robbery) on the spot (she submitted her explanation only on October 1, 1986, because she was supposedly consulting her lawyer. Also, so she claims, she was hospitalized on September 18, 1986, and discharged on September 21, 1986. She also presented PC Sgt. Rogelio Babida, her husband, who testified that he led an inquiry on the robbery on September 24, 1986.

The respondent Sandiganbayan rejected these defenses on the findings, among other things, as follows: (1) The accused alleged that she lost (from robbery) the amount of P70,000.00, yet she was found short of P69,721.64; (2) She claimed that the incident took place on September 16, 1986, and yet she reported the matter on October 1, 1986 only, when she could have informed the City Auditor when the latter made his inquiries on September 16, 1986; (3) The City Auditor also supposedly reported no visible signs of assault upon the person of the accused when he interviewed her on September 16, 1986. These, so the Sandiganbayan asserted, belie claims of physical injuries that allegedly required the said accused's hospitalization; (4) The investigation conducted by Sgt. Babida flies in the face of: (a) he is the accused's husband; and (b) the investigation was meant to smokescreen the crime of malversation with loss arising from robbery; and (5) Her claim that the alleged robbers divested her of the money but left the remittance advice must also fly in the face of: (a) the law of improbability, and that (b) if this were the case, why did she not, so the Sandiganbayan queries, present the said remittance advice to the City Auditor on September 16, 1986?

Now, our ruling.

The petition faces a dismissal. The Court is of the considered opinion that the accused-petitioner is guilty of the offense of malversation by conversion, defined and punished under Article 217 of the Revised Penal Code, beyond reasonable doubt.

Malversation by conversion contains the following ingredients:

- (1) The offender is an accountable public officer;
- (2) He had official custody of Government funds or property; and
- (3) He appropriated or converted the same.

In the case at bar, the accused-petitioner was Senior Clerk and Acting Cashier of the Post Office, at Tacloban City. There is no gainsaying the fact that, as Acting Cashier, she held and handled money as a matter of official duty. When she, therefore, failed to return the money upon demand therefor on September 16, 1986, the burden was hers to prove loss (by means other than negligence.[9])

Now, the fact of loss is not the controversy herein. The parties are agreed that the money is missing. But if any party may be held accountable therefor, it is the accused-petitioner, and she alone. *Res ipsa loquitur*.

It is not the fact that the accused's defense is infirm that we render this affirmance. The fact remains that the petitioner has failed to: (1) prove her allegations; and (2) rebut the prosecution's evidence.

Anent the accused-petitioner's claims, viz.:

(1) That the missing sum of P278.36 was allegedly money belonging to her husband she had inadvertently commingled with the P69,721.64 to be deposited; (2) That it took her two weeks to answer the City Auditor's queries because she had to confer with counsel; (3) That her injuries were not conspicuous because they were superficial; (4) That she, in fact, reported the robbery over the radio; (5) That she also, in fact, reported the matter to the authorities; (6) That the Sandiganbayan had been partial to the prosecution; and (7) That as a robbery victim, she was not expected to act with poise and composure, specifically, with respect to the remittance slip she failed to produce in the inquiry of September 16, 1986 -- suffice it to say as follows:

(1) First, the questions raised have to do with witness credibility. On that score, the Court has consistently said that "credibility" is the realm of the trial court. The Supreme Court is mainly an appellate tribunal, not a trier of facts.[10]

(2) It defies logic as to how: (a) the accused-petitioner could have commixed her alleged husband's money with Post Office Money; as cashier she should have known better than to ascertain which are Government funds and private money; (b) and how she could so confidently asseverate that her injuries (as a result of the alleged robbery) were not visible because they were supposedly superficial, yet, she was supposedly hospitalized therefor for three days.

What evidently emerges here, the dust having settled and the smoke having cleared, is a masterstroke designed to outwit the Government, thus: First, the accused-petitioner converts Government funds. Second, she goes on record (over the radio) to report an alleged robbery. Third, she mounts an investigation led by her P.C. Sgt.-husband, Rogelio C. Babida, not so that the money could be recovered but so that the act of embezzlement would be concealed.

We are content, all things considered, that the accused-petitioner is guilty as charged, and guilty beyond reasonable doubt.

WHEREFORE, the petition is DENIED. The decision of the Sandiganbayan is AFFIRMED in all respects.

SO ORDERED.

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

[1] Rollo, 9; 32-33.

[2] Id., 48-49.

[3] CONST., art. III, sec. 14, par. (2).

[4] People v. Saavedra, No. L-48738, May 18, 1987, 149 SCRA 610, 636, and cases cited there.

[5] REV. PEN. CODE, art. 217.

[6] Rollo, id., 34-35.

[7] 92 Phil 856 (1953).

[8] Supra, 859.

[9] REV. PEN. CODE, art. 217, supra.

[10] Castillo v. Sandiganbayan, Nos. 52352-5, June 30, 1987, 151 SCRA 425.

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