

GONZALO ALVAREZ Y NANA, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 88014. September 13, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Gonzalo Alvarez was, at all time material to this inquiry, the Assistant Municipal Treasurer of Tacurong, Sultan Kudarat. On two separate occasions, an audit was made of the funds in his official custody, the first on July 23, and the second on August 9, 1982. The audit was made by Mrs. Gloria Garcia, Auditing Examiner III, Office of the Provincial Auditor, Isulan, Sultan Kudarat. The first examination revealed a shortage on his part of P86,704.57; the second, P1,091.15.[1] The total shortage amounted to P87,795.72. Corresponding demand letters were served on him to produce the missing funds. He failed to do so.

Three years later, an information was filed against Alvarez in the Sandiganbayan,[2] accusing him, as a public officer "accountable for public funds collected and received by him by reason of the duties of his office," of having misappropriated and misapplied "for his own personal use and benefit the amount of Eighty Seven Thousand Seven Hundred Ninety-Five Pesos and Seventy-two Centavos (P87,795.72), to the damage and prejudice of the Government."

Alvarez entered a plea of not guilty when arraigned on this charge. At the trial which ensued, the parties presented a stipulation of facts signed by the Special Prosecution Officer and by Alvarez and his counsel of choice. The prosecution's evidence, thereafter adduced, was limited to documents; no witness was called. Alvarez testified in his behalf, and presented one witness, Isidro T. Javier; and both of them identified various exhibits in the course of their testimony.[3] At the close of the trial, the Sandiganbayan required the parties to file memoranda. Alvarez did. The prosecution did not.

The Sandiganbayan's verdict was handed down on February 28, 1989.[4] It found Alvarez guilty of malversation, but only of the reduced sum of P10,097.15. The dispositive part of the judgment reads as follows:[5]

"WHEREFORE, We hereby find GONZALO ALVAREZ y NANA GUILTY beyond reasonable doubt, as principal, of the crime of malversation of public funds defined in Article 217 (3) of the Revised Penal Code, and there being no modifying circumstances, impose upon him the indeterminate sentence ranging from SEVEN (7) YEARS, FOUR (4) MONTHS, and ONE (1) DAY of prision mayor, as minimum, to ELEVEN (11) YEARS, SIX (6) MONTHS, and TWENTY-ONE (21) DAYS of prision mayor, as maximum, the penalty of perpetual disqualification, and a fine of TEN THOUSAND NINETY SEVEN PESOS and FIFTEEN CENTAVOS (P10,097.15), Philippine Currency. He is further ordered to restitute to the Municipality of Tacurong, Sultan Kudarat, and the amount malversed. No cost.

SO ORDERED."

Alvarez filed a motion for reconsideration. It was denied by order dated April 28, 1989. Not only was the motion "devoid of merit," said the Sandiganbayan, it was also fatally defective in that it lacked the notice of hearing

required by Sections 3, 4 and 5, Rule 15 of the Rules of Court, and the Court's orders calendaring the motion for hearing and granting the prosecution time to react thereto did not toll the running of the period of appeal.[6]

Alvarez has brought his case to this Court by a petition for review on certiorari, and here contends that the verdict against him should be reversed, the Sandiganbayan having committed the following grave errors in so convicting him:[7]

- 1) holding that * * * (he) had not sufficiently accounted for the public funds entrusted to his care;"
- 2) "not giving as much credence to the exonerating certification issued by the Office of the Provincial Auditor that * * * (he, Alvarez) had not misappropriated the amount of P10,097.15 as that given to the other items as contained in the same certification;"
- 3) "holding that * * * (he) is guilty of committing * * * the offense of malversation of public funds under the provisions of Article 217 (3) of the Revised Penal Code;" and
- 4) "holding that the motion for reconsideration filed by the petitioner was defective."

Article 217 of the Revised Penal Code makes clear 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," merely gives rise to a prima facie presumption "that he has put such missing funds or property to personal use." A conviction may be founded on the presumption notwithstanding that there is no direct evidence of misappropriation, if the public officer fails to satisfactorily explain the shortage in his accounts.[8] But the presumption, being merely prima facie, may be rebutted and destroyed by competent proof that the accountable officer has not in truth put the funds or property in question to personal use.[9]

The Office of the Solicitor General — in the comment submitted by it pursuant to this Court's requirement therefor[10] — submits that in the case at bar, that presumption had indeed been overcome because the evidence adduced by Alvarez adequately establishes that he "has fully accounted for the supposed cash shortage." Hence, the Solicitor General recommends that Alvarez be acquitted.

The Court agrees with the Solicitor General's assessment of the proofs and accepts his recommendation that the petitioner be absolved of the accusation against him.

As recounted in the challenged decision itself:[11]

- 1) " * * * (W)hen (the auditor) Garcia presented to Alvarez her Report of Examination dated July 23, 1982, for his signature, he asked her for time to look for records which could explain the shortage, but she prevailed on him to sign on the promise that she would deduct from the shortage whatever amount would be justified by the records that he would find."
- 2) "So, during his 90-day preventive suspension from office as a result of the findings of Garcia, he searched for, and located, vouchers in the vault of the Municipal Treasurer of Tacurong, who had absconded. In fact, this abscondence triggered the examination of the accounts of accountable officers in his office."
- 3) Alvarez then "submitted to Garcia 'for audit examination (the) vouchers, chits and other records (found by him), but she refused to consider them."
- 4) "This prompted * * * (Alvarez) to go to Pepe Mato, the Regional Supervising Auditor and concurrently Provincial Auditor Designate of Sultan Kudarat at Cotabato City, and requested him to verify the said documents. Mato, however, was very busy at the time and, upon suggestion of Alvarez, said that Isidro T. Javier, Officer-in-Charge of the Office of the Provincial Auditor of Sultan Kudarat in his absence, could do the

verification."

5) "Alvarez then went to Javier at Isulan, who examined the documents and thereafter signed a statement (entitled "Statement of Cash Items consisting of Various Paid Vouchers Which Were Inadvertently Misplaced During the Cash Examination Last July 23, 1982 and Subsequently Found and Presented for Verification and Validation"[12]) under the typewritten words, 'Verified and Found Correct.'"

6) "On September 19, 1984, Alvarez asked Angel E. Fernandez, the newly appointed Assistant Provincial Auditor of Sultan Kudarat and Officer-in-Charge of the Office of the Provincial Auditor, to make a certification based on the verification of Javier. Obliging, Fernandez scanned the documents one by one and then issued the desired certification * * *."

Fernandez's certification states in no uncertain terms that Alvarez had satisfactorily accounted for the sum of P63,572.91 which, among others, had come into his official possession. The certification reads as follows:[13]

"THIS IS TO CERTIFY that after a thorough re-examination on the vouchers presented by Mr. Gonzalo N. Alvarez, Asst. Municipal Treasurer, Tacurong, Sultan Kudarat, as formerly duly verified by Mr. Isidro Javier, former COA examiner III of the Office, covering his (Mr. Alvarez) failure to present the said vouchers during the audit of his accounts of which he misplaced the said vouchers in the total aggregate amount of P63,571.82 of which he was declared short in the same amount was subsequently found/recovered from the Office files in the Office of the Municipal Treasurer of Tacurong, Sultan Kudarat and the said vouchers are valid cash items and the same may now be taken up in the books of accounts of the Municipal Treasurer of Tacurong and the amount of P63,571.82 is now credited to the accountability of Mr. Gonzalo N. Alvarez. However, in the actual summing up of recovered vouchers, it amounted to P63,572.91 thereby showing an overage of P1.10."

Among the items included in Alvarez' accounting — "verified and validated" as above stated by both Isidro T. Javier, at the time the OIC of the Office of the Provincial Auditor of Sultan Kudarat, and his successor, Asst. Provincial Auditor Angel E. Fernandez — were cash advances in the total sum of P10,108.27 to certain employees of the municipal Government of Tacurong, Sultan Kudarat on their request, viz.: (1) to Fanny Rendon, P1,360.00; (2) to Lilia de los Santos, P2,743.00; (3) to Linda Limon, P2,300.00; and (4) to Emerson Bilgera, P3,705.25. In acknowledgment of the cash advances (or "chits") given them, Rendon, de los Santos and Limon executed handwritten certifications. These certifications were identified by Alvarez in the course of his testimony, and were later formally offered in evidence without objection by the prosecution.[14] As regards Bilgera's cash advance, Alvarez presented and identified a printed "Reimbursement Expense Receipt" filled out and signed by Bilgera, acknowledging delivery to him of the cash advance. These written acknowledgments are all dated October 24, 1982, except that of Rendon, which bears the date of October 25, 1982.

Alvarez' evidence further shows that he also turned over to the COA officials concerned the sum of P24,233.90 "representing liquidation of unremitted collections." [15] Thus, going by Alvarez' proofs, it appears that he had fully accounted for the alleged shortage in the funds in his custody as Assistant Municipal Treasurer. The supposed shortage in the total sum of P87,795.72, is shown to be non-existent by Alvarez' accounting — for the total amount of P87,806.82 (an overage of P11.10) — verified as correct by no less than two (2) COA officials.

The foregoing evidence notwithstanding, the Sandiganbayan found Alvarez short in his accounts in the sum of P10,097.15 and declared him guilty beyond reasonable doubt of malversing that amount. This conclusion was reached as a result of the Sandiganbayan's rejection of the testimonial and documentary evidence regarding the cash advances or "chits" given by Alvarez to the employees in the Office of the Municipal Treasurer of Tacurong. That rejection was founded on several reasons; but, as will shortly be demonstrated, none of those reasons can stand scrutiny.

The first reason advanced — that no one testified as to the genuineness and due execution of the receipts purportedly signed by the employees, Fanny Rendon, Lilia de los Santos, and Linda Limon — is somewhat mystifying. No objection was presented by the prosecution when the receipts were offered in evidence; hence, objection to the genuineness and due execution of the receipts must be deemed waived. In any event, the execution and authenticity of the receipts were proved by a person "who saw the writing(s) executed,"[16] Alvarez himself; he identified those receipts as having been signed in his presence by the named signatories. Moreover, the receipts were examined and verified as correct, i.e., reflective of the truth, by COA officials Javier and Fernandez, *supra*.

The second reason, that there was supposedly no evidence that Bilgera, like Rendon, de los Santos and Limon, is an employee who could receive cash advances, like the first, is untenable. Bilgera's receipt was not objected to by the prosecution at the time it was formally offered in evidence. No evidence was in fact adduced by the prosecution in derogation of the receipt. The matter was clearly one easily and quickly capable of verification; by presentation of Bilgera's appointment; and there is on record, a certification issued by the Office of the Municipal Treasurer of Tacurong, also not objected to, attesting to Bilgera's being indeed a municipal employee to which a copy of the appointment itself is attached.[17]

The third reason given by the Sandiganbayan for rejecting the evidence of the cash advances is the absence of proof that the giving of said advances was a practice in the Office of the Municipal Treasurer of Tacurong. But again, there is on record a certification that the giving of "chits" or "vales" (cash advances) was actually a common practice in the Municipal Treasurer's Office at Tacurong.[18] In fact, the Solicitor General has drawn attention to this Court's ruling in *Quizo v. Sandiganbayan*,[19] accepting the defendant's explanation therein "that the granting of the cash advances was done in good faith, with no intent to gain and borne out of good will considering that it was a practice tolerated in the office * * * (and hence) negligence evidentiary of malice or intent to defraud the government cannot be imputed to him."

Still another reason given by the Sandiganbayan, a fourth, is that Alvarez failed to make known these "vales" or cash advances to Auditor Garcia, who would have allowed them as such, instead of recording them as a shortage. But the evidence is that Alvarez did in fact ask for time to locate documents that would permit him to fully account for the funds in his custody, that after locating the documents, he submitted them to Auditor Garcia but she refused to consider them; and this is why, as already recounted, he went to Regional Supervising Auditor Pepe Mato, then to Isidro Javier (OIC of the Office of the Provincial Auditor, Sultan Kudarat), and finally to Angel Fernandez (the Assistant Provincial Auditor), the last two having issued certifications attesting to the authenticity and correctness of the vouchers and documents presented by Alvarez.[20]

The Sandiganbayan also considered as a mere afterthought the certifications executed by the municipal employees who had received cash advances, because the certifications were prepared only in October, 1982 — 85 days after audit. It will be recalled, however, that the records of the office of the municipal treasurer were not at the time in the most orderly condition, the Municipal Treasurer who was charged with the duty of keeping the records of these transactions having absconded; and it was only after diligent search that some of the records were discovered, this being admitted in the Sandiganbayan's Decision itself.[21] The Sandiganbayan also adverts to the failure of Alvarez to collect the cash advances, but as the Solicitor General also points out, Alvarez was suspended for 90 days, after which the case for malversation was filed against him; under these circumstances, collection of the accounts would seem to have been the least of his worries.

It may well be that some auditing rules were infringed by the giving of cash advances to municipal employees. The fact is that there is no evidence that Alvarez ever put the public funds in his custody to his personal use. The holding in *Villacorta v. People, et al.*[22] is thus pertinent:

"Nor can negligence approximating malice or fraud be attributed to petitioner. If he made wrong payments, they were made in good faith mainly to government personnel, some of them even working at the provincial auditor's and the provincial treasurer's offices. And if these payments ran counter to auditing rules and regulations, they did not amount to a criminal offense and he should only be held administratively or civilly liable."

By and large, the evidence presented against the petitioner in this case does not fulfill the test of moral certainty and may not be deemed sufficient to support a conviction.[23]

The demonstrable merit of Alvarez' appeal divests of cogency the proposition that his procedural lapse in failing to set his motion for reconsideration for hearing is a fatal one, precluding his resort to the remedy of appeal.[24] The ends of justice may not be thwarted by an adjective imperfection, where the merit of a cause is otherwise clear, and where, as here, no undue delay or prejudice to a party has been thereby caused.

Motions for reconsideration of decisions or final orders of the Sandiganbayan are not governed by Rule 15 of the Rules of Court. The Sandiganbayan's own Rules[25] provide that petitions for reconsideration of its judgments or final orders may be filed within 15 days from promulgation or notice thereof "upon the grounds, in the form and subject to the requirements, for motions for new trial in criminal cases under Rule 121 of the Rules of Court." [26] And Rule 121 of the Rules of Court pertinently provides that a motion for new trial or reconsideration "shall be in writing and filed with the court, * * * (and) shall state the grounds on which it is based," and that notice thereof shall "be given to the fiscal." [27] In this case, it is not disputed that a copy of the motion for reconsideration, to which were attached certifications by public officers in substantiation of certain of its averments, was actually given to the fiscal. The prosecution was thus accorded opportunity to oppose the motion. Moreover, the Sandiganbayan obviously did not then consider the failure of the movant to fix the place, date and time of the hearing of his motion a substantial defect, for instead of giving the motion short shrift, it set the incident for hearing, and even "granted the prosecution ten days from receipt (of the corresponding order) within which to oppose/comment, * * * (although the latter) did not respond." Indeed, it would seem that according to current practice, it is the Sandiganbayan itself (as a collegiate court), rather than the movant, that determines the date and time of hearings of motions. In any event, in this case, the purpose of the law in requiring a movant to set his motion for hearing appears to have been fully served: the prosecution was given ample opportunity to read and study the motion, and to oppose it. Considering the peculiar circumstances of this case, not the least of which, as above stressed, is the validity of the points raised by Alvarez in the proceeding at bar, the Court is not prepared to declare that his omission to set his motion for hearing is so grievous an error as to foreclose the award to him of the relief to which he is otherwise entitled.

WHEREFORE, the challenged Decision promulgated on February 28, 1989 is REVERSED AND SET ASIDE, and the petitioner Gonzalo Alvarez y Nana is ACQUITTED of the crime with which he stands charged, without pronouncement as to costs.

Fernan, C.J., Melencio-Herrera, Cruz, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Gutierrez, Jr., Feliciano, and Sarmiento, JJ., on leave.

Gancayco, J., retired, as of August 20, 1991.

[1] Exhibits A and B

[2] Rollo, pp. 35-36, the information is dated November 21, 1985

[3] SEE footnotes 11 to 14, inclusive, in relation to footnote 10, and related text, post

[4] The decision was written for the Court by Balajadia, J., with the concurrence of Molina (Chairman) and del Rosario, JJ.

[5] Rollo, p. 48

[6] Id., pp. 51-57

[7] Id., p. 12

[8] De Guzman v. People, 119 SCRA 337

[9] Quizo v. Sandiganbayan, 149 SCRA 108, citing U.S. v. Catolico, 18 Phil. 504; Roxas v. C.A., et al., 154 SCRA 278, 286-287

[10] Comment dated Nov. 2, 1989

[11] Rollo, pp. 39-41; see footnote 2, ante

[12] Exhibit "1;" see footnote 2, ante

[13] Exhibit "2"

[14] Exhibits 25, 26, 27 and 27-A

[15] Exhibit "28"

[16] SEC. 20, Rule 132, Rules of Court, as amended (formerly Sec. 21, Rule 132)

[17] Annex B, motion for reconsideration of the verdict of conviction

[18] Annex A, id.

[19] 149 SCRA 108, 113 (1987)

[20] SEE footnotes 11 and 12, and related text

[21] Rollo, p. 45

[22] 145 SCRA 425, 432

[23] SEE cases cited in Solicitor General's Comment of Nov. 2, 1989: Peo. v. Ale, 145 SCRA 64; Peo. v. Parayno, 24 SCRA 3; U.S. v. Maaño, 2 Phil. 718; Peo. v. Pacana, 47 Phil. 48

[24] SEE footnote 6, ante

[25] Effective January 10, 1979

[26] Rule XII

[27] SEC. 4, Rule 121 of the Revised Rules of Criminal Procedure, eff., Nov. 13, 1988, reads as follows: "Form of motion and notice to the fiscal. — The motion for new trial or reconsideration shall be in writing and filed with the court. It shall state the grounds on which it is based. If the motion for new trial is based on a newly discovered evidence, it must be supported by the affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated copies of documents which it is proposed to introduce in evidence. Notice of the motion for new trial or reconsideration shall be given to the fiscal. (3a)" N.B. The section is substantially the same as Sec. 3, Rule 121 of the Rules of 1964.

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