

RESTITUTO RIZON Y PARAS, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 91271. October 03, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review on certiorari filed by Restituto P. Rizon to set aside the Decision of the Sandiganbayan[1] convicting him of the crime of Malversation of Public Funds and sentencing him to an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal; to further suffer perpetual special disqualification; to pay a fine of P303,376.71; to indemnify the Republic of the Philippines in the amount of P103,379.46 representing the amount still unaccounted for; and to pay the costs.[2] The penalty imposed was arrived at after appreciating the mitigating circumstance of voluntary surrender without any aggravating circumstance in offset.[3]

At the time of his conviction, petitioner Rizon had already served as Municipal Treasurer of Guihulngan, Negros Oriental for 25 years, more or less, having been promoted to the said position in 1961.[4]

The pertinent facts are basically undisputed.

On April 7, 1986, at around 2:00 p.m., an audit team of the Commission on Audit headed by Roman Adanza and composed of three others commenced its audit examination of the petitioner's accountability.[5] The audit examination lasted until 9:00 A.M. of April 9, 1986, with the team issuing the petitioner a demand letter with the same date for the restitution of a shortage of P314,986.82.[6] In the afternoon of the same day, however, the petitioner received a second demand letter, also dated April 9, 1986, demanding the restitution of a shortage of P334,457.42[7] broken down as follows:

1. General Fund P 26,340.60

2. Trust and KKK Funds 308,116.82

P334,457.42[8]

vvvvvvvvvvvv

The second demand letter, alleging a shortage of P334,457.42, came after the team had reviewed the cashbook and found "a difference." [9]

The petitioner was relieved as Municipal Treasurer on June 16, 1986, and was replaced by Gandioso Ijan, in an acting capacity.[10] The case was then referred by the Tanodbayan to 2[nd] Asst. Provincial Fiscal of Negros

Oriental Augusto Colina, as Deputized Tanodbayan, for a preliminary investigation. Asst. Fiscal Colina, thereafter, issued a resolution on November 21, 1986, recommending that an information be filed with the Sandiganbayan against the petitioner for Malversation of Public Funds, notwithstanding his findings that the actual total shortages incurred by the petitioner had been restituted and fully reconciled, since, he argued, restitution is appreciated only as a mitigating circumstance.[11] Similarly, the petitioner was found guilty of an administrative charge of Dishonesty and/or Violation of Auditing Regulations on April 25, 1988, regardless of the finding that his accountability had been fully settled.[12]

On November 28, 1988, the petitioner was charged before the Sandiganbayan of the crime of Malversation of Public Funds. After trial, the respondent court found the petitioner guilty as charged.

The petitioner basically anchors his defense on the ground that since the audit examination conducted by the COA auditors was attended with irregularities and inaccuracies, the prima facie presumption of malversation could not arise. In addition, since the prosecution was not able to prove the guilt of the accused beyond reasonable doubt, the presumption of his innocence must stay.

The appeal is impressed with merit.

The conviction of the petitioner by the respondent court was premised on the findings that, in the words of the lower court, "the evidence presented by the accused is insufficient to overcome the presumption that he has put the public funds in his custody to personal use when he failed to produce said funds upon examination on April 7, 1986. Clearly, the fact presumed is but a natural inference from the fact proven." [13]

However, as we have ruled, en banc, in *Tinga v. People*, [14] the prima facie presumption arises only if there is no issue as to the accuracy, correctness, and regularity of the audit findings and if the fact that funds are missing is indubitably established." *Tinga* is applicable to the case at bar.

The inaccuracy, incorrectness, and irregularity of the audit findings are correlative to the unconformable manner in which the audit examination was conducted, as manifested by the following circumstances:

1. The auditing team did not have a copy of the report of the latest audit prior to the April 7, 1980 audit, which is contrary to a Cash Examination Manual requirement. A copy of the latest Certificate of Settlement and Balance issued to the accountable officer to be examined is necessary to guide the auditing team in its reconciliation of accounts;

2. Section 560 (d) of the Manual of Instructions to Treasurers and Auditors and Other Guidelines provides:

"SEC. 560. The procedure and scope of a cash examination and inspection. A cash examination shall embrace the following:

x x x x x x x x

(d) Inspection of the total contents of the safes and other cash receptacles in the possession of each accountable officer or employee to establish absolute certainty that no other cash, checks, warrants, or valid cash items have been left out of the count and inventory."

This was not observed, as testified to by Roman Adanza, team leader of the COA auditing team, to wit:

x x x x x x x x

Q:

But did you inspect the safe and safe receptacle of the accused during the conduct of your audit?

A:

I think we could not inspect the safe. It is the duty of the accountable officer to inspect the safe.[15]

X X X X X X X X

The Manual orders the inspection of the total contents of the safes. Obviously, this duty is directed to the auditing team and not to the accountable officer. It is the auditing team that is conducting the examination. Apparently, in the team's failure to follow this procedure, various records were inadvertently left out, including certificates of indebtedness which were later credited to the petitioner's account. Gandioso Ijan, the petitioner's successor in office, thus testifies:

X X X X X X X X

Q:

How were these certificates of indebtedness found?

A:

This certificate [sic] of indebtedness was [sic] found in the vault of the municipality of which Mr. Rizon was handling formally and he just discovered this when Mr. dela Cruz took over from me and we found out that there were certificates of indebtedness which were in his safe at that time.

X X X X X X X X

JUSTICE ESCAREAL: Are you saying that you did not find the certification [sic] of indebtedness in the vault of the Municipal Treasurer?

A:

We found this actually during the transfer of Mr. dela Cruz and myself because I cleaned the safe and found out these are documents also, very important documents.[16]

X X X X X X X X

3. Section 561 of the same Manual then provides:

"SEC. 561. Prohibition of incomplete examinations. — Examinations shall be thorough and complete in every case to the last detail. Mere count of cash and valid cash items without verifying the stock of issued and unissued accountable forms and various records of collections and disbursements, as well as the entries in the cashbook is not examination at all."

From the records of the case, it is evident that the audit examinations lacked the necessary thoroughness and complete-ness the Manual requires. It is highly improbable that an auditing team of four can conduct an audit examination to the last detail in only about twelve (12) hours,[17] considering that the total accountability of the petitioner was nearly one (1) million pesos,[18] and further taking into consideration that the last time the petitioner was audited prior to the April 7, 1986 audit was July, 1985,[19] which again is contrary to the once-in-every-3-months-audit requirement.[20] Team leader Adanza even admitted this fact:

X X X X X X X X

A:

x x x but you know there are five books to be reviewed and plenty of reports. This examination covers six months so it took us a long time to finally make a report.[21]

X X X X X X X X

4. The auditing team failed to submit a narrative report within ten (10) working days from the completion of the audit, as required by the rules.[22] Furthermore, they failed to submit an advance report within three (3) working days from the discovery of the alleged malversation.[23]

5. Section 46 of P.D. 1445[24] calls upon the examining officer to seize the office of the accountable officer and its contents upon the discovery of a shortage. This was not complied with. Team Leader Adanza, when confronted, at first contended that he thought he was not required to seize the office and its contents, then later claimed that the provision was not being practiced. His excuses are flimsy, to say the least.

Moreover, the issuance to the petitioner-accused of two (2) demand letters on the same day with varying amounts of alleged shortages which the audit team had allegedly uncovered without conducting any supplemental review or re-audit, further weakens the reliability of the audit findings. Likewise, the diametrically opposed findings of the respondent court, on one hand, and that of the Deputized Tanodbayan and the Acting Regional Director of the Ministry of Finance, on the other, concerning the disallowance of disbursements and its consequent restitution, debilitates the former's theory that there was only a partial restitution for the disallowed disbursements. Finally, the respondent court committed a basic mathematical error in arriving at P103,379.46,[25] the amount allegedly still unaccounted for. The respondent court even negligently interchanged the amount of P31,057.71[26] and the amount of P31,075.71[27] representing unredeemed Certificates of Indebtedness, while the Solicitor General suggested an amount of P31,076.46[28] representing the same certificates. These inconsistencies, trivial though they may be, illustrate the careless manner in which the examination of the books of the petitioner was conducted.

All told, the prima facie presumption of malversation under Article 217 of the Revised Penal Code can not hold in view of the reasonable doubt that the petitioner-accused appropriated the amount still unaccounted for, if indeed there still remain funds unaccounted for.

We reiterate a portion of the well-written ponencia of Justice Melencio-Herrera which is very apt in the case at bar.

At this juncture, it may not be amiss to state that considering the gravity of the offense of Malversation of Public Funds, just as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. Accounts should be examined carefully and thoroughly "to the last detail," "with absolute certainty" in strict compliance with the Manual of Instructions. Special note should be taken of the fact that disallowances for lack of pre-audit are not necessarily tantamount to malversation in law. Imperative it is likewise that sufficient time be given examined officers to reconstruct their accounts and refute the charge that they had put government funds to their personal uses.[29]

In view of the foregoing, the presumption is that the petitioner-accused is innocent, and the presumption continues up to the moment his guilt is proved beyond a reasonable doubt. To justify the conviction of the petitioner-accused of the offense charged, the evidence must establish the guilt of the accused to a moral certainty. In the case at bar, the proofs on record fall short of that required criterion.

WHEREFORE, on a reasonable doubt, the judgment of conviction is hereby REVERSED and the petitioner-accused, RESTITUTO P. RIZON, is hereby ACQUITTED of the crime of Malversation of Public Funds.

SO ORDERED.

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

[1] Second Division; Decision penned by Associate Justice Romeo Escareal, (Chairman), concurred in by Associate Justices Jose Balajadia and Cipriano Del Rosario, promulgated on November 23, 1989.

[2] Rollo, 25-26

[3] Ibid.

[4] TSN, 23, session of June 16, 1989.

[5] TSN, 18-19, session of April 4, 1989.

[6] Exhibit "1".

[7] Exhibit "E".

[8] Exhibit "F".

[9] TSN, 21-22, session of April 4, 1989.

[10] TSN, 4-6, session of June 15, 1989.

[11] Rollo, 64; 12-13.

[12] Ibid. 78-79.

[13] Decision of Sandiganbayan, 20.

[14] No. 57650, April 15, 1988, 160 SCRA 483.

[15] TSN, session of April 5, 1989.

- [16] TSN, 13-15, session of June 13, 1989.
- [17] TSN, 17-18, session of April 5, 1989.
- [18] Exhibit "F".
- [19] TSN, 6, session of April 5, 1989.
- [20] Section 559, Manual of Instructions to Treasurers and Auditors and Other Guidelines.
- [21] TSN, 16, session of April 5, 1989.
- [22] Cash Examination Manual of the Commission on Audit, 51.
- [23] Ibid.
- [24] Adopted in 32-33 of the Cash Examination Manual of the COA.
- [25] Decision of the Sandiganbayan, 21-22.
- [26] Ibid, 21.
- [27] Ibid, 18.
- [28] Rollo, 101.
- [29] *Tinga v. People*, *supra*.

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