

ROLANDO ANG, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, FIRST DIVISION – MANILA, RESPONDENT.

G.R. No. 91886. May 20, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for review on certiorari, the petitioner prays for a reversal of the verdict of conviction insofar as he is concerned in the decision promulgated on January 26, 1990 in Criminal Case No. 1552 entitled "People of the Philippines v. Rolando Ang, Esteban Alfonso, Lazaro Guinto, Fernando Creencia and Marshall Lu." The dispositive portion of the questioned judgment reads:

"WHEREFORE, judgment is hereby rendered finding accused Rolando Ang guilty beyond reasonable doubt as principal of the crime of Malversation of Public Funds, as defined and penalized under paragraph 3, Article 217 of the Revised Penal Code, and, applying the Indeterminate Sentence Law, hereby sentences him to suffer the penalty of 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, as maximum; to suffer the penalty of perpetual special disqualification; to pay a fine of P7,490.00; and to pay the costs" (Rollo, p. 30)

The Information filed by the Office of the Tanodbayan on June 5, 1980 charged all the accused in Criminal Case No. 1552 as principals for the offense of Malversation of Public Funds under Article 217 of the Revised Penal Code committed as follows:

"That during the period from September to October 10, 1979, in Malate, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the accused Lazaro Guinto, Fernando Creencia and Rolando Ang, all bill collectors, while Esteban Alfonso was the Branch Cashier, at Branch Office No. 2, Malate, Manila, of the Metropolitan Waterworks and Sewerage System (MWSS), a government entity, and as such were accountable public officers for public funds received by them by reason of the nature of their work and taking advantage of their official position, by conspiring, confederating and mutually helping one another with the indispensable cooperation of Marshall Lu, a private party, on various dates within the aforesaid period, wilfully, unlawfully, feloniously and with grave abuse of confidence exchanged their cash collections into forty-six (46) checks drawn in the name of Marshall Lu, with the consent and conformity of Esteban Alfonso, but which checks were dishonored by drawee bank, the Consolidated Bank and Trust Corp., for lack of funds and, thereafter, in pursuance to conspiracy, misappropriated and converted for their own personal use and benefit the cash collections which are public funds, to the damage, loss and prejudice of the Metropolitan Waterworks and Sewerage System in the sum total of FORTY EIGHT THOUSAND AND TWO HUNDRED NINETY-ONE (P48,291.00) PESOS, Philippine Currency." (Rollo, p. 32)

Trial proceeded except against the petitioner and his other co-accused Lazaro Guinto, who had not been arrested and brought to the jurisdiction of the Court.

On March 14, 1983, the public respondent found the accused Alfonso, Creencia and Lu guilty beyond reasonable doubt of the crime of malversation as charged in the Information.

The petitioner was subsequently apprehended and Criminal Case No. 1552 was reinstated insofar as he was concerned.

Initially, the petitioner's arraignment was scheduled on May 29, 1987 but it was deferred on account of a motion for reinvestigation filed by his counsel with the Office of the Special Prosecutor and the Tanodbayan.

Arraignment was re-scheduled on August 12, 1988 but at the instance of the Tanodbayan Special Prosecutor, it was postponed pending the result of the reinvestigation then being conducted.

In a Resolution of the Special Prosecutor dated August 9, 1988 and approved on August 30, 1988 by the Office of the Ombudsman, it was recommended that the Information against the petitioner be ordered withdrawn. The decretal portion of the said Resolution reads:

"WHEREFORE, in view and considering the above findings of facts and the law on which they are based, we find that the offense charged as against the accused Rolando Ang was not committed and that there exists no prima facie evidence to further indict him for malversation. Consequently, it is hereby respectfully recommended that the Information heretofore filed against him only be ordered withdrawn." (Resolution of the Office of the Special Prosecutor, p. 6; Rollo, p. 94).

On September 14, 1988, the Special Prosecutor filed with the public respondent a Motion to Withdraw the Information against the petitioner. This was followed by a Manifestation on September 19, 1988 that the Commission on Audit (COA) and the Metropolitan Waterworks and Sewerage System (MWSS) had been duly notified of the said motion. Both COA and MWSS interposed no objections thereto.

On November 10, 1988, the public respondent denied the "Motion to Withdraw Information" ruling that:

". . . The fact that accused Ang converted his collections to a check belonging to another person other than MWSS customer already put him in the peril of losing his money. The fact that the check was eventually made good after it bounced only means that the amount that was lost temporarily was restituted. Whether their acts were justifiable or not, whether there was negligence or intent to defraud will be determined at trial. What is important is that at this time there is probable cause that accused Ang converted the sum of P7,490.00 belonging to the MWSS for the use and benefit of somebody else, accused Ang being then an accountable officer. Since other accused appear to have already been tried and convicted, the Information may be amended to the extent that the same may be appropriate." (Rollo, p. 52)

Consequently, the petitioner was arraigned. A plea of not guilty was entered.

On February 23, 1989, the following stipulation of facts was made by the prosecution and the defense at a pre-trial conference, to wit:

"1. That while the Information refers to a total of 46 checks purportedly issued by a person by the name of Marshall Lu for the cash portion of the collections of the various MWSS collectors, only the amount of P7,490.00 refers directly to the accused Ang;

2. While the accused is prepared to accept that part of his collections were converted into checks, this admission is qualified by the following:

a) That the conversion of the cash proceeds of his collection into check or checks was thru the 'machinations of Lazaro Guinto' another collector more senior to the accused Ang in the service;

b) Accused Ang is not aware of the total value of these checks and therefore makes no admission thereon;

3. The accused in this regard affirms that while portions of his collections were converted into personal checks, the total value of his collections were at all times personally delivered by him to the cashier of the MWSS Branch at Malate, this being the consistent procedure without any exception during the relevant periods in the

Information;

4. It is admitted that accused Rolando Ang during the relevant period was an employee of the MWSS, he, then being a collector stationed at Branch Office No. 2 at Malate, Manila;
5. While the accused is prepared to admit that sometime during the preliminary investigation dishonored checks were made good by Marshall Lu, the accused cannot admit that the checks made good included those which were delivered to him or brought about by the 'machinations of Lazaro Guinto,' even if in fairness to the accused the prosecution does not aver that the amount of P7,490.00 were made good and, therefore, to that extent, restituted to the government; and
6. That the sworn statement which the prosecution now has sought to be marked as Exhibit "A" consisting of 2 pages dated March 24, 1980, is a faithful rendition of the sentiments of the accused at that time, the sworn statement having been executed with the assistance of Atty. Augusto S. Jimenez for the purposes of the preliminary investigation then being conducted by the Office of the Tanodbayan.

It is understood then that the prosecution, whether by primary evidence or by secondary evidence, will prove the participation of the accused in the conversion of part of his collections into private checks, whether by intent or by negligence, as well as of the fact that these private checks were the ones actually delivered by him to the MWSS Cashier as part of his regular duties of turning over his collection to the cashier of the MWSS at its Malate Branch." (Sandiganbayan Decision, pp. 2-3; Rollo, pp. 24-25)

On August 2, 1989, the parties further agreed on the following additional stipulations:

"1. By way of supplement to paragraph 5, the prosecution admits that the amount subject matter of the basic Information which is P48,291.00 which includes the amount of P7,490.00 for which the accused is personally charged, were all paid by Marshall Lu and not one centavo thereof was paid by the accused;

2. That the accused through Atty. Antonio Manzano has requested for the striking out of paragraph 6 of the pre-trial order on the ground that the admission made therein is improvident, the same being incriminatory. The Court denies the striking out of said paragraph since the admission contained in paragraph 6 of the basic Pre-Trial Order was made in open Court and with the Assistance of Atty. Basilio V. Lanoria, as the records of the proceedings on that date will demonstrate. The Court notes that Atty. Manzano signed in behalf of Atty. Lanoria after the actual pre-trial when Atty. Lanoria was incapacitated by reason of illness, which incapacity remains today." (Sandiganbayan Decision, pp. 3-4; Rollo, pp. 25-26)

During the trial, the prosecution presented only one witness in the person of Josefina Tecson, a Supervising Management Systems and Information Specialist of the MWSS who testified on the Analysis Sheet (Exhibit "B") she prepared in connection with the dishonored checks allegedly submitted by the petitioner as part of his remittances as MWSS bill collector.

Likewise, the defense presented only one witness, Elsa Ongkiko, the Division Manager of the MWSS who stated in open court that petitioner's co-accused, senior collector Lazaro Guinto admitted to her that he alone was guilty of substituting the cash money collected from MWSS customers with checks which included at least seven checks for the petitioner's cash collection amounting to P7,490.00.

On January 26, 1990, the public respondent rendered the questioned decision after a finding that:

"From the evidence, We are convinced that the crime of Malversation of Public Funds was committed by accused Ang. In his capacity as MWSS bill collector, he received cash payment for MWSS from water concessionaires in his area. Instead of turning the cash proceeds of his cash collections to the MWSS, he consented to cash Marshall Lu's seven (7) checks out of his collections. Accused Ang's act of substituting his

cash collections with Lu's personal check is, in effect, loaning the amount to the latter. Accused Ang had possession of the MWSS collections under authority of law and he is under obligation to safeguard the money for the government. The use of the funds to encash Marshall Lu's checks without the authority from the MWSS is malversation." (Sandiganbayan Decision, p. 7, Rollo, p. 29)

On February 8, 1990, the present petition was filed with the following assignment of errors:

I

"THE FIRST DIVISION OF SANDIGANBAYAN SERIOUSLY ERRED IN CONVICTING ACCUSED ROLANDO ANG OF THE CRIME CHARGED AFTER THE OFFICE OF THE SPECIAL PROSECUTOR FILED THE MOTION TO WITHDRAW INFORMATION FOR REASON THAT THERE IS NO PRIMA FACIE EVIDENCE.

II

THE FIRST DIVISION OF SANDIGANBAYAN SERIOUSLY ERRED IN CONVICTING ACCUSED ROLANDO ANG OF THE CRIME CHARGED DESPITE THE MOTION TO WITHDRAW INFORMATION FILED BY THE OFFICE OF THE SPECIAL PROSECUTOR, AND THE RESPECTIVE MANIFESTATIONS FILED BY THE COMMISSION ON AUDIT, THE METROPOLITAN WATERWORKS SEWERAGE SYSTEM (MWSS) THRU THE LEGAL DEPARTMENT.

III

THE FIRST DIVISION OF SANDIGANBAYAN SERIOUSLY ERRED IN CONVICTING ACCUSED ROLANDO ANG OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF EVIDENCE TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

IV

THE FIRST DIVISION OF SANDIGANBAYAN SERIOUSLY ERRED IN CONVICTING ACCUSED ROLANDO ANG OF THE CRIME CHARGED FOR HIS FAILURE TO TAKE THE WITNESS CHAIR TO DENY HIS COMPLICITY.

V

THE DECISION RENDERED BY THE FIRST DIVISION OF SANDIGANBAYAN IS AN EXERCISE OF GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION." (Rollo, pp. 6-7)

The central issue educed from the assigned errors is whether or not the public respondent's judgment of conviction was based on evidence sufficient to meet the quantum of proof required in criminal cases.

The petitioner avers that his guilt was not proved beyond reasonable doubt since the prosecution failed to offer concrete evidence warranting his conviction. In support of his contention, the petitioner maintains that the testimony of the lone prosecution witness who tried to show that the dishonored checks in question could be traced to the numbers of the books of account apparently assigned to the petitioner was controverted by the testimony of the defense witness who testified that the said books of account numbers pertained to the remittances made by the petitioner's co-accused and senior bill collector, Lazaro Guinto.

The petitioner further bolsters his claim that he is innocent of the crime of malversation as defined and penalized under the third paragraph of Article 217 of the Revised Penal Code by citing the Resolution of the Office of the Special Prosecutor dated August 9, 1990 which found no prima facie evidence to indict him for the crime as charged in the Information after having conducted the reinvestigation as regards the petitioner and the Manifestations of both the MWSS and the COA dated October 10, 1988 and October 24, 1988, respectively,

which supported the recommendation of the Special Prosecutor that the Information against the petitioner be withdrawn.

A corollary issue, therefore, raised to us is whether or not the public respondent gravely abused its discretion in denying the Tanodbayan Special Prosecutor's Motion to Withdraw the Information against the petitioner after reinvestigation proceedings yielded a finding that the offense charged as against the petitioner was not committed.

We are convinced that the instant petition is impressed with merit.

We first ascertain whether or not the public respondent committed a grave abuse of discretion in denying the Tanodbayan Special Prosecutor's "Motion to Withdraw the Information" against the petitioner. We rule that the said matter can no longer be raised on appeal. Extant from the records of the case is the fact that after the denial of the petitioner's Motion to Withdraw the Information against him, trial proceedings ensued where the petitioner, through counsel, participated without first filing a motion for reconsideration of the public respondent's Resolution dated November 11, 1989 denying the aforestated Motion to Withdraw Information filed by the prosecutor. The petitioner is deemed to have waived his right to impugn the said public respondent's resolution. A motion to dismiss filed by the fiscal after the Court had acquired jurisdiction over the case should be addressed solely to the trial judge, the Sandiganbayan in this case. As we have unequivocally stated in the case of *Crespo v. Mogul*, 151 SCRA 462 [1987] and reiterated in the case of *Velasquez v. Undersecretary of Justice*, 182 SCRA 388 [1990]:

"The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after the reinvestigation . . ."

Anent the crime of malversation imputed to the petitioner, after an assessment of the evidence by the public respondent, we find reversible error in the findings and judgment of conviction for failure to meet the required quantum of evidence in criminal cases.

It is a well-entrenched rule that in criminal cases the accused is entitled to an acquittal unless his guilt is shown beyond reasonable doubt (Rule 133, Section 2, Revised Rules on Evidence) In the case at bar, the public respondent convicted the petitioner of the crime of malversation of public funds as defined and penalized under paragraph 3, Article 217 of the Revised Penal Code which states that:

"The 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."

Although the law creates a presumption that the mere failure of an accountable officer to produce public funds which have come into his hands on demand by an officer duly authorized to examine his accounts is prima facie evidence of conversion, the presumption is only prima facie, hence, rebuttable. This prima facie presumption does not shift the burden of proof to the defense. The burden of proof still lies on the prosecution which is duty-bound to adduce evidence showing that all the elements of malversation are present before the defense submits rebuttal evidence to overcome the presumption aforementioned.

Under Article 217 of the Revised Penal Code, the following are the elements of malversation, to wit:

- (1) that the offender be a public officer;
- (2) that he had the custody or control of funds or property by reason of the duties of his office;
- (3) that those funds or property were public funds or property for which he was accountable; and
- (4) that he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take such public funds or property. (see *Emiliano Cimafranca, Jr. v. Sandiganbayan*, et al. G.R. No. 94408, February 14, 1991; *Generoso P. Corpuz v. People*, G.R. No. 74259, February 14, 1991)

There is no dispute that the petitioner, by the nature of his work as a bill collector of MWSS, falls under the first three elements above-enumerated. What is left is whether or not there is proof beyond reasonable doubt that the petitioner appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take the public funds for which he was accountable as found by the public respondent.

A careful review of the records of this case reveals that the testimony of the lone witness for the prosecution cannot sustain a conviction. Her testimony merely states that on the basis of an Analysis Sheet (Exhibit "B") which she prepared covering the 46 dishonored checks later redeemed by the petitioner's co-accused Marshall Lu, seven of the said checks amounting to P7,490.00 were remittances made by the petitioner and that this was reflected in the collection receipts submitted in his name. During the testimony given by the prosecution, it was ascertained that there is no showing on the receipts themselves as to who prepared said receipts. The testimony of the other witness, however, creates a doubt as to the reliability of the said information regarding the collection receipts allegedly in the petitioner's name. On Exhibit "B", the defense witness testified that the book account numbers written at the backs of the checks in question which were placed in the name of the petitioner did not belong to him but were in fact assigned to another co-accused, Lazaro Guinto. Considering the discrepancy pointed out by this witness, the sole testimony of Ms. Tecson, the MWSS supervising management systems' specialist appears deficient and wanting as basis to send somebody to jail for a maximum period of more than eleven (11) years.

The prosecution's other basis rests on the defense counsel's failure to present Rolando Ang himself as a witness to deny the charges against him. We reiterate our ruling that:

"The prosecution cannot draw its strength from the weakness of the defense. The evidence of the People must be strong enough to stand on its own two feet instead of leaning on the crutches of the evidence for the defense. It must be strong enough to convince this Court that the prisoner in the dock must be punished, not because he cannot prove that he is innocent but because it has proved that he is guilty." (*People v. Benjamin Peralta De Guzman*, G.R. No. 86172, March 4, 1991)

The petitioner's alleged negligence in allowing the senior collector to convert cash collections into checks may be proof of poor judgment or too trusting a nature insofar as a superior officer is concerned but there must be stronger evidence to show fraud, malice, or other indicia of deliberateness in the conspiracy cooked up with Marshall Lu. The prosecution failed to show that the petitioner was privy to the conspirational scheme. Much less is there any proof that he profited from the questioned acts. Any suspicions of conspiracy, no matter how sincerely and strongly felt by the MWSS, must be converted into evidence before conviction beyond reasonable doubt may be imposed.

No less than the Commission on Audit cleared the petitioner of any accountability as shown by its Comment dated October 21, 1988 agreeing with the Special Prosecutor's Motion to Withdraw Information which reads:

"Please be informed that verification made by the Office disclosed that the case against Rolando Ang was initiated by the MWSS management and that there are no records at the COA, MWSS which shows (sic) that

Rolando Ang has property or money accountability for which he is to be held liable."

"Hence, this Office offers no objection to the attached Motion to Withdraw Information as filed."

(Signed) JOSE G. MEDINA
Assistant Director
Officer-in-charge"
(Petitioner's reply, p. 4; Rollo, p. 9)

In view of the foregoing, we affirm once more the decisional law that the prosecution must not rely on the vulnerability of the defense evidence but on the strength of its own proofs. (People v. Flores, 186 SCRA 303 [1990]; People v. Fernandez, 186 SCRA 830 [1990]; People v. Lati, 184 SCRA 336 [1990]).

This is perhaps an occasion when CLAO (now PAO) lawyers may be admonished to exert their greater efforts for the fullest protection of their clients' rights and interests. When the Tanodbayan itself found no prima facie evidence of malversation against the client of CLAO during the reinvestigation proceedings and it became clear that a higher quantum of evidence would be required at the trial - this was a strong point which the defense should have capitalized. The defense raised the issue in this petition for review but did not press it strongly at the appropriate time. The requisite amount of zeal and dedication which the Court expects from de officio counsel and especially from government lawyers is unfortunately not demonstrated by the records.

WHEREFORE, premises considered, the petition is GRANTED and the decision of the respondent Sandiganbayan dated January 26, 1990 is hereby REVERSED and SET ASIDE. The petitioner is ACQUITTED on reasonable doubt.

SO ORDERED.

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

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