

LUCIANO KIMPO Y NIÑANUEVO, PETITIONER, VS. THE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 95604. April 29, 1994

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-95604/>

VITUG, J.:

Petitioner Luciano Kimpo y Niñanuevo, a Special Collecting Officer of the Bureau of Domestic Trade at General Santos City, was found guilty beyond reasonable doubt by the Sandiganbayan of malversation of public funds. He appealed to this Court.

The case was initiated by Special Prosecution Officer Mothalib C. Onos who, on 29 March 1989, filed with the Sandiganbayan an information charging petitioner with having committed the following offense:

"That on or about April 30, 1985 and/or sometime prior thereto, in General Santos city, and within the jurisdiction of this Honorable Court, accused Luciano Kimpo, a public officer, being the Special Collecting Officer, Bureau of Domestic Trade, General Santos City, and as such is an accountable officer responsible for the funds collected by him by reason of the duties of his office, did then and there wilfully, unlawfully and feloniously, with grave abuse of confidence, appropriate, embezzle and convert to his personal use and benefit the sum of Fifteen Thousand Three Hundred Nine Pesos (P15,309.00), which amount constitutes his collection, to the damage and prejudice of the Government in the aforesaid amount.

"Contrary to law."

When arraigned, petitioner, assisted by counsel,[1] pleaded, "not guilty."

At the pre-trial inquest conducted by the Sandiganbayan, the following exhibits were admitted:

"1. Exhibits A and A-1, as well as the fact that they are faithful reproductions of the originals. In connection therewith, the accused admitted that he was on or before April 30, 1985, Special Collecting Officer, Bureau of Trade, General Santos City;

"2. That an audit-examination of the cash and accounts of the accused was conducted on April 30, 1985; that the corresponding Report of Examination (Exhibit B), Statement of Accountability for Accountable Forms without Money Value (Exhibit B-1), and Reconciliation Statement of Accountability (Exhibit B--3) were made and signed, and that the signatures appearing on the dorsal side of Exhibits B and B-1 are those of the accused, all these admissions being subject to the qualification that the accused is questioning the validity of the audit examination and the accuracy of the results thereof on constitutional grounds;

"3. The existence of Exhibits C, E, F, M and M-1, including the fact that they are faithful copies of the originals, subject to the same qualification made with respect to Exhibits B, B-1 and B-2;

"4. The existence of Exhibits D and D-1, including the fact that they are correct copies of the originals, but not their relevance;

"5. Exhibit H as the Official Cash Book of the accused and his signatures appearing between the entries therein

beginning August 1, 1984 and up to April 31, 1985, with the qualification that the said entries were not made by him;

"6. The existence of Exhibits I, I-1 to I-40, J, J-1 to J-95, K, K-1 to K-26, and L, L-1 to L-44 (carbon copies of official receipts) and his signatures thereon, subject to the qualification that the entries therein were not made by him;

"7. Exhibit N, subject to the qualification that the data mentioned therein were based on the results of the audit examination, the validity and accuracy of which are questioned;

"8. Exhibits A[1]-1, N[2]-2, T[2]-1, L[3]- 1, F[4]-2, A[5], L[7], N[7]-1, U[7]-2, B[8]-1, C[8], D[8], E[8], G[8], G[8], H[8], M[8]-2, Y[8]-2 AND Y[8]-3 (xerox copies of official receipts), including the fact that they are faithful reproductions of the originals;

"9. Exhibits J[8] to O[8], as well as the signatures appearing on the last page of each exhibit and the fact that they are true copies of the originals."

The testimonial evidence consisted of the testimonies of Lydia Mendoza, State Audit Examiner of the Commission on Audit, for the prosecution, and of Milda de la Peña, Trade and Industry Analyst of the Department of Trade and Industry at its South Cotabato Provincial Office, as well as that of petitioner Kimpo himself, for the defense.

From all the evidence adduced, the Sandiganbayan concluded, thus:

"Accused herein having admitted his public position as alleged in the information and the existence of a shortage of P15,309.00 upon audit examination of his accountabilities, then what remains to be resolved only is whether any criminal liability is attributable to him by reason of such shortage. As can be deduced from the defense evidence, testimonial and documentary, accused lays the blame for the shortage on one Yvette Samaranos, whom he admitted to have been retained by him as his unofficial clerk/collector in his office and who attended to the receipt of payments for the registration of business names and issuance of certifications and official receipts for such payments, including penalties, and fees for repair shop establishments. While the certifications and official receipts were pre-signed by him, the collections thereunder were made by Samaranos, who also entered the amounts collected by her in accused's cashbook.

"The amounts collected between the period from July 17, 1984 to April 30, 1985 totalled P100,486.50, from which should be deducted total remittances of P85,177.50, leaving a balance of P16,221.50. An Inventory of Cash and/or allowed Cash Items produced P912.50, leaving a shortage of P15,309.00 which was determined by Auditor Lydia R. Mendoza as the difference between the amounts appearing in the originals of the Official Receipts/Letter of Confirmation and the duplicate Official Receipts. In other words, what were collected and reflected in the duplicate ORs were not the correct amounts appearing in the original ORs issued to the payees and which were verified and confirmed later by the payees.

"Auditor Mendoza supported her findings of a shortage and the reasons for such shortage thru a formal 'Comparison of Duplicate Official Receipts of P2.00 per Report of Collections with the Confirmation Letter and/or Original Official Receipts' for the period from July 17, 1984 to April 30, 1985. Therein, it clearly appeared that while the amounts to be officially collected should be P110.00 or P112.00, the amounts reported to have been collected and which were reflected in the duplicate ORs were only P2.00. The unreported and unrecorded collections of P108.00 or P110.00 from individual payees were reflected in the original ORs which were confirmed by said payees through confirmation letters and which totalled P15,309.00.

"After the cash count made by Auditor Mendoza as a prelude to her Report of Examination and subsequent verification/confirmation, she sent a letter of demand to the accused on October 14, 1985, which the accused received on the same date. Therein, he was required to produce immediately the balance of P3,418.50, due to

the fact that he had made deposits amounting to P11,890.50, 'after cash count and confirmed by us (Please see Scheduled 2).' On October 17, 1985, accused submitted his letter-explanation to Auditor Mendoza wherein he laid the blame for the shortage on his office clerk whom he had already relieved and alleged that he had not benefited, directly or indirectly, from the missing funds. On October 18, 1985 and November 7, 1985, accused 'restituted and deposited with the Bureau of Treasury thru PNB, GSC' the amounts of P2,933.50 and P485.00, respectively, which, if added to his previous deposits from June 2, 1985 to August 23, 1985 amounting to P11,890.50, would total P15,309.50.

"There being no dispute, therefore, as to the existence of the shortage in the accounts of the accused, as found by Auditor Mendoza as of April 30, 1985, amounting to P15,309.00 and the fact of accused's settlement for such shortage through installments deposited with the PNB, General Santos City between June 2, 1985 to November 7, 1985, then it behooves the Court to determine if accused herein had rendered himself liable or not under Article 217 of the Revised Penal Code by reason of such shortage. Such determination must perforce go into the merits of his claim that the responsibility for such shortage should be laid on the doorstep of Yvette Samaranos, a private individual, whom he inherited from his predecessor who had allowed her to work in the office as clerk-collector and whom he retained for the following reasons: (1) the Office of the Bureau of Domestic Trade at General Santos City, of which he was the Provincial Trade Development Officer, was a one-man operation, hence, understaffed; (2) he had to go out to the field to campaign for increased registration of business names, hold symposiums of consumers' groups, conduct meetings for retailers and consumers and repair shop establishments; (3) he occasionally goes out to attend raffles conducted by private establishments as representative of the Bureau of Domestic Trade; and (4) he had to leave someone in the office to attend to the general public in the registration and/or renewal of business names and the issuance of certifications and official receipts for the collection of the proper fees. For the reason that he was out in the field for days at times, he pre-signed official receipts in blank, as well as certifications, which he entrusted to Samaranos who then fills up the said receipts and certifications and makes the corresponding entries in his cashbook. As it turned out, however, Samaranos collected the proper official fees, issued the original receipts with the proper amounts, filled up the duplicates thereof with reduced amounts, made the corresponding entries in the cashbook based on the amounts reflected in the duplicates and made the proper remittances based on the improper entries.

"Accused's defense cannot be accepted, nor can it absolve him from criminal liability for the missing public funds which the audit examination on his accountabilities as of April 30, 1985 had revealed. As Special Disbursing Officer, he was the primary accountable officer for such funds and the fact, which was not definitely or conclusively established by his evidence, that another person, albeit a private individual, was responsible for the misappropriation thereof, cannot be considered in exculpation or justification of such primary accountability.

"xxx xxx xxx

"Consequently, accused herein cannot blame anyone else for the predicament that he found himself in. First of all, he should not have allowed Yvette Samaranos, who did not possess any appointment, to perform official acts which he was ordained to do. Secondly, since the collection of official fees was a sensitive area, he should have refrained from pre-signing official receipts and certifications. Thirdly, if he were that desirous of rendering conscientious public service, he should have ensured that the collection of official fees was properly made, recorded and remitted. Fourthly, his admission that he had to pay the salaries of Samaranos through honoraria received by him from raffles is fatal to his cause since he should have realized that, under such circumstance, Samaranos would be subject to the most severe temptation to fool around with the agency's collections. Apparently, accused was more interested in conducting field trips and raffles whereby he would be able to collect per diems, travelling allowances and honoraria from private firms. To allow public accountable officers to adopt the practice resorted to by the accused in allowing private individuals to perform public functions would lead to chaos and anarchy and would render nugatory all applicable norms of public trust and

accountability. His bare and unsupported claim that, after discovery of the shortage upon audit examination, he took steps to charge Yvette Samaranos for Estafa Thru Falsification of Public Documents does not, in any way, erase his criminal liability which could be characterized as malversation of Public Funds through negligence. In his case, such negligence may be described as gross and inexcusable, amounting to a definite laxity resulting in the deliberate non-performance of his duties."

On the basis of the above findings, judgment was rendered by the Sandiganbayan convicting petitioner Kimpo and sentencing him, accordingly:

"WHEREFORE, judgment is hereby rendered finding accused Luciano Kimpo y Niñanuevo GUILTY beyond reasonable doubt of 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 circumstances of voluntary surrender and full restitution, after applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty ranging from SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision mayor as the minimum, to ELEVEN (11) YEARS, SIX (6) MONTHS and TWENTY-ONE (21) DAYS, likewise of prision mayor as the maximum; to further suffer perpetual special disqualification; to pay a fine of P15,309.00 equal to the amount malversed and to pay the costs of this action. No civil liability is awarded in view of the full restitution of the amount involved.

"SO ORDERED."

In this appeal, petitioner submitted the following assignment of errors: That -

"I

"THE RESPONDENT COURT ERRED IN LAW WHEN IT CONSIDERED EXHIBITS B TO B-3 AGAINST THE ACCUSED OVER ACCUSED'S OBJECTIONS ANCHORED ON ARTICLE III, SECTIONS 12 & 17 OF THE 1987 CONSTITUTION.

"II

"THE RESPONDENT COURT ERRED IN LAW WHEN IT CONSIDERED -- OVER PETITIONER'S OBJECTIONS -- ALLEGED CONFIRMATION LETTERS NOT SIGNED OR NOT PROPERLY IDENTIFIED, AS EVIDENCE TO PROVE ALLEGED SHORTAGE.

"III

"THE RESPONDENT COURT ERRED IN LAW WHEN IT RULED THAT ACCUSED IS PRESUMED TO HAVE MALVERSED P15,309.00 BECAUSE HE FAILED TO HAVE THE AMOUNT FORTHCOMING UPON DEMAND.

"IV

"THE RESPONDENT COURT ERRED IN LAW IN HOLDING ACCUSED LIABLE FOR MALVERSATION OF PUBLIC FUNDS THROUGH NEGLIGENCE."

The appeal has no merit.

Petitioner faults the Sandiganbayan for having considered Exhibits "B" to "B-3," inclusive, despite what he claims to be an impairment of his constitutional rights under Article III, Section 12 paragraphs (1) and (3), and Section 17,[2] of the 1987 Constitution. We cannot agree. The questioned exhibits pertain to the Report of Examination, the Statement of Accountability for Accountable Forms without Money Value, and a Reconciliation Statement of Accountability, which are official forms prepared and accomplished in the normal course of audit regularly

conducted by the Commission on Audit. Petitioner, not being at the time under investigation for the commission of a criminal offense, let alone under custodial investigation, clearly cannot be said to have been deprived of the constitutional prerogatives he invokes (*Villaroza vs. Sandiganbayan*, G.R. No. 79636, 17 December 1987; *People vs. Olivares*, 186 SCRA 536).

On the so-called confirmatory letters, respondent court concluded thus -

"III. The Letters of Confirmation (Exhibits Z to II, JJ to SS, TT to GGG, HHH to WWW, XXX to ZZZZ, AAAA to JJJJ, KKKKK to KKKKKKK to JJJJJJJ and JJJJJJJ) were not the primary evidence presented by the prosecution to prove the manipulations and irregularities in question but the originals and duplicates of the Official Receipts (Exhibits L to I-40, J to J-95, K to K-26 and L to L-44), all of which were admittedly signed by the accused, wherein it could clearly be seen that payments for P110.00 were reflected as P2.00 only. Thus, the Letters of Confirmation are only secondary evidence to support and prove the principal facts in issue. Accused had not, REPEAT, had not, denied that the above-mentioned official receipts, originals and duplicates, are genuine and correctly reflect the amounts which appear to be listed therein."

Hardly can the above findings be validly challenged. Indeed, considering all the evidence on record, there is not much that the questioned letters could have lent to augment the case for the prosecution.

Petitioner has been charged with having violated Article 217 of the Revised Penal Code, which, in full, reads:

"ART. 217. Malversation of public funds or property. -- Presumption of malversation. -- Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty the misappropriation or malversation of such funds or property shall suffer:

"1. The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

"2. The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

"3. The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

"4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

"In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

"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 use."

The validity and constitutionality of the presumption of evidence provided in the above Article, which petitioner questions, has long been settled affirmatively in a number of cases heretofore decided by this Court;^[3] that point need not again be belabored.

Even while an information charges willful malversation, conviction for malversation through negligence may, nevertheless, be adjudged as the evidence so yields. Malversation, unlike other felonies punished under the Revised Penal Code, is consummated, and the same penalty is imposed, regardless of whether the mode of

commission is with intent or due to negligence.[4]

Petitioner argues that the restitution made by him of the full amount should exonerate him from criminal liability. The argument not only is an inappropriate defense in criminal cases but it also even at times tightens a finding of guilt. In malversation of public funds, payment, indemnification, or reimbursement of funds misappropriated, after the commission of the crime, does not extinguish the criminal liability of the offender which, at most, can merely affect the accused's civil liability thereunder[5] and be considered a mitigating circumstance being analogous to voluntary surrender.[6]

WHEREFORE, the petition is DISMISSED, and the appealed decision of respondent Sandiganbayan is AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, and Kapunan, JJ., concur.

[1] Atty. Samuel Occeña

[2] Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x x x x x x.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

x x x x x x x x.

Sec. 17. No person shall be compelled to be a witness against himself.

[3] Bacasnot vs. Sandiganbayan, 155 SCRA 379; Albores vs. Court of Appeals, 132 SCRA 604; People vs. Livara, 94 Phil. 771; People vs. Mingoa, 92 Phil. 856.

[4] Cabello vs. Sandiganbayan, 197 SCRA 94.

[5] Felicilda vs. Grospe, 211 SCRA 285; People vs. Miranda, 2 SCRA 262.

[6] El Pueblo de Filipinas vs. Velasquez, 72 Phil. 98.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.