

EDWIN B. VILLANUEVA, PETITIONER, VS. HON. SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 95627. August 16, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

An information for malversation of public funds was filed on April 22, 1988 with the Sandiganbayan against petitioner Edwin B. Villanueva, a warehouseman of the National Food Authority (NFA), in Criminal Case No. 12855, allegedly committed as follows:

"That on June 19, 1981 and sometime prior and subsequent thereto, in the Municipality of Pontevedra, Capiz and within the jurisdiction of this Honorable Court, the accused, a public officer, he being the Warehouseman of the NFA, Balo, Roxas City, and as such, responsible and accountable for such government property under his custody and received by him, taking advantage of his public position and with grave abuse of confidence, did then and there, wilfully, unlawfully, and feloniously take, misappropriate, misapply, embezzle and convert to his personal use and benefit the five hundred seventy (570) bags of milled rice amounting to P103,734.14 to the damage and prejudice of the government in the aforementioned amount.

"Contrary to law." [1]

After trial on the merits, respondent court rendered its decision, dated August 16, 1990, with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered finding accused Edwin Villanueva y Bading "GUILTY" beyond reasonable doubt as principal in the offense of Malversation of Public Property, as defined and penalized under Article 217, paragraph 4 of the Revised Penal Code, and favorably appreciating the mitigating circumstance in offset, after applying the benefits of the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision 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 P103,734.14 equivalent to the value of the public property malversed; to indemnify the Government of the Republic of the Philip-pines in the same amount of P103,734.14, and to pay the costs of this action.

"SO ORDERED." [2]

As found by respondent court, petitioner was the Grains Stock Control Officer (GSCO) in charge of the Barredo Warehouse and the NSDC Warehouse respectively located in Pilar and Pontevedra, Capiz. The practice in said warehouses was that incoming rice stocks are issued Warehouse Stock Receipts (WSR) and outgoing stocks are issued Warehouse Stock Issues (WSI).

Private complainant Reynaldo R. Badayos was the owner and operator of the Badayos Ricemill in San Nicolas, Pilar, Capiz which was duly licensed by the NFA to mill its palay stocks under contracts duly executed therefor. He was also a vessel contractor engaged in the transfer of NFA milled rice from his rice mill or NFA warehouse

to the pier site for shipment to Bacolod City.

In February, 1982, NFA Auditor Ernesto Gacrama conducted an audit examination of Banayos' accountability for rice stocks and empty sacks comprising the period from January 28, 1981 to September 20, 1981. The examination initially showed a shortage of 126.5 bags of rice in petitioner's liquidation report and which shortage Badayos promptly settled. However, based on petitioner's footnotes in his August 16-23, 1981 Stock Report for the NSDC Warehouse, it appeared that WSRs Nos. 137290-92 were erroneously credited with WSIs Nos. 47570-72, hence Badayos had a shortage of 570 bags of rice worth P103,734.14. A demand letter for restitution, dated March 18, 1982 was served on Badayos.

On January 17, 1983, as a result of a request for re-audit by Badayos who claimed that he had accounted for the alleged missing stocks which he had actually shipped to Bacolod City, COA Legal Officer Rudy M. Villareña submitted an investigation report[3] to NFA Corporate Auditor Eduardo Gomez wherein he recommended that WSRs Nos. 137290-92 reflecting 570 bags of rice, together with the replacement cost of 570 empty sacks, be credited to Badayos inasmuch as said WSRs had not really been cancelled. Said report further recommended that appropriate action be initiated against petitioner as GSCO in charge of the NSDC and Barredo warehouses for the latter's failure to comply properly with the procedure in the cancellation of accountable documents.

Auditor Gomez then ordered in his memorandum[4] of February 17, 1983 that Badayos be credited with the 570 bags of rice disallowed in audit and to debit said account against petitioner. This ruling was elevated by Badayos to Chairman Francisco Tantuico, Jr. of the Commission on Audit who, on October 31, 1985,[5] upheld Gomez' ruling based on the unequivocal admission of petitioner in his certification, dated November 19, 1981, that WSRs Nos. 137290-92 were never actually cancelled,[6] and which he further affirmed in another certification dated November 27, 1982.[7] Based thereon, Badayos was refunded the amount of P54,750.78 which he had theretofore paid under protest.

Respondent court further ascertained that the 570 bags of milled rice covered by WSRs Nos. 137290-92 of the NSDC Warehouse issued by Eduardo Berebe, NFA Milling Supervisor, were shipped or transferred to Bacolod City by Badayos under the "Technical-In and Technical-Out" (TITO) procedure whereby palay stock withdrawn by Badayos from the NSDC Warehouse was milled in the Badayos Ricemill and, instead of being returned to the NSDC Warehouse, by-passed it and was brought in delivery trucks to the pier and loaded on the M/L "Seven Seas" for transport and delivery to NFA Bacolod on June 19, 1981. The bill of lading was also prepared by Berebe and, thereafter, the corresponding WSIs Nos. 475470-72 were recorded in favor of Badayos and which should also be for the NSDC Warehouse.[8]

Subsequently, however, WSRs Nos. 137290-92 appeared to have been cancelled without the consent of higher authorities and the same 570 bags of milled rice were recorded in the Barredo Warehouse under WSRs Nos. 139491-93 and WSIs Nos. 478487-89.[9] Although petitioner contends that WSRs Nos. 139491-93 were mere replacements of WSRs Nos. 137290-92, actually the copies of the auditor, miller-contractor, handler and GSCO of WSRs Nos. 137290-92 were not cancelled. As GSCO in charge of both the NSDC and Barredo warehouses, it is petitioner who cancels the WSRs and delivers the palay stocks to the Badayos Ricemill, and the milling supervisor, Eduardo Berebe, receives the same and prepares and signs the WSRs and WSIs.

Petitioner submits that what was actually involved was an erroneous documentation which resulted in the cancellation of the accounting copies of WSRs Nos. 137290-92, with the corresponding WSIs Nos. 475470--72 representing 570 bags of rice, which were allegedly improperly cancelled in the record of the NSDC Warehouse and were merely replaced by WSRs Nos. 139491-93, with the corresponding WSIs Nos. 478487-89, for the same number of bags of rice and the same net weight in kilos in favor of the Barredo Warehouse. He alleged that it was

Berebe who prepares the WSRs and the WSIs when Badayos delivers the stocks of rice from his ricemill to the designated warehouse. The reason, according to him, why the name of the warehouse where he was assigned appeared in the documents prepared by Berebe was because it was used as a reference or imaginary warehouse for the management to know the flow of stocks.[10]

He claimed that on June 19, 1981, Badayos made a delivery and made a claim for trucking freight and for credit in such delivery. However, on July 25, 1981 no delivery was made by Badayos to NFA, Bacolod City as allegedly shown by the certification of its Provincial Manager Conrado L. Ibañez issued on March 29, 1989.[11] Continuing, he avers that in the third week of July, 1981, he met Berebe in the NFA, Capiz at Balo, Roxas City and the latter told him about an error he made in the documentation. Berebe allegedly said that he used the WSRs and the WSIs of the NSDC Warehouse instead of using the Barredo Warehouse documents. The stock actually involved was the stock of Barredo Warehouse and not that of NSDC. They both allegedly went to the office of NFA Provincial Manager Benjamin Marta who was then out, hence they went to the office of Auditor Gacrama for advice on the error in documentation.[12] Gacrama purportedly instructed Berebe to cancel the NSDC documents (WSRs Nos. 137290-92) at the accounting office and to replace the same with the Barredo documents. Petitioner has no knowledge as to whether or not the other copies of said NSDC documents were cancelled by Berebe as instructed by Gacrama.[13]

Petitioner admits that on November 19, 1981, he executed a certification that the NSDC Warehouse did receive 570 bags of rice. He further claims that he made the certification forgetting the cancellation of the accounting copies of WSRs Nos. 137290-92 in July of that year. He allegedly based the certification on the GSCO copies which were not cancelled by Berebe.[14] Parenthetically, he had previously said that the stocks were supposed to be delivered to the Barredo Warehouse.

Benjamin Marta, presented by the defense, testified that the procedure adopted at that time by the NFA when the ricemill is far from the office was the "Technical-In and Technical-Out" (TITO) system, which meant that the stocks did not actually go to the warehouse; instead, from a particular warehouse it goes direct to where it is to be delivered, so "TITO" is the term used to specify or emphasize a transaction which is purely documentary.[15]

He amplified his testimony, as hereunder summarized by respondent court:

"x x x the accused was his former GSCO and as such, he was the one in-charge of the Barredo and the NSDC warehouses, while Eduardo Berebe was the Milling Supervisor assigned at the Badayos ricemill by the milling management who oversee(s) the operation of the ricemill, keep(s) records of stocks and receipt issues, prepare(s) and sign(s) documents such as the WSR and WSI. He knows Reynaldo Badayos who was then designated as milling contractor of the NFA and as such, he was responsible for the withdrawal of palay for milling from the NFA warehouse and delivers the expected recoveries of rice to a designated warehouse. Aside from being a milling contractor, Badayos was also a vessel contractor who undertook the transfer of rice from his ricemill to Bacolod and to the pier site utilizing his trucks. Since the ricemill was far from their office, they adopt the Technical-In and the Technical-Out system which was utilized for purposes of economical operation, time saving and effort saving and to trace or monitor the stocks. The system was used when the stocks of rice come from the ricemill and transported to the vessel. Once the stocks are loaded on a particular vessel, a bill of lading is prepared by Berebe indicating therein the volume of rice, the quantity and its destination and signed by Berebe as shipper. The stocks are reflected in the WSR and the original is given to the miller for liquidation while the other copies are distributed to the auditing and accounting office and to end-users. If the stocks are placed inside the Barredo and NSDC warehouses, the accused would be the one to sign the documents. On June 19, 1981, there was a delivery made by Badayos ricemill to the NFA and the one who prepared the WSR and WSI was Eduardo Berebe." [16]

He further explained that the reason why several copies of the WSRs had to be distributed was because it was part

of the internal control of the NFA and if there is only one copy of the WSRs, once lost they would not have any other reference. It was only when there was a necessity for the correction of errors that the WSRs are cancelled. If only the accounting copy is cancelled and the others are not, it becomes a questionable document and the one who made the cancellation will have to explain.

As stated at the outset, respondent court handed down a judgment convicting petitioner. It further struck down petitioner's motion for reconsideration in its resolution of October 1, 1990, thus:

"x x x We are of the considered opinion that accused had not met frontally the charge described in the information and which was clearly and positively proven by the prosecution's evidence that he was an accountable officer as Grains Stock Control Officer (GSCO) and In-Charge of the Barredo and NSDC Warehouses, and that there was a shortage in the Barredo Warehouse, stock accountabilities arising out of the irregular, improper and unjustified cancellation of the accounting copies of WSR Nos. 137290 to 137292 of NSDC stocks and replacing them with Barredo WSRs and WSIs. As accountable officer of both warehouses, accused bears the primary liability for any shortage arising in either warehouse and cannot exempt himself therefrom by attributing the shortage to the illegal manipulations of Berebe. Inasmuch as accused had not been able to explain satisfactorily why there was a shortage in his accountabilities, then his liability therefor must be adjudged." (Underscoring in the original text.)[17]

Petitioner is now before us, posing the following issues for resolution:

- 1) Whether or not the Sandiganbayan gravely erred in holding petitioner liable/accountable for the 570 bags of rice, the same being contrary to the findings of fact of said court and the evidence of record;
- 2) Whether or not the Sandiganbayan gravely erred in holding that there is a shortage in the Barredo Warehouse, the same being contrary to the findings of fact of said court and the evidence of record;
- 3) Whether or not the Sandiganbayan acted without jurisdiction in not passing squarely upon the disputed fact raised by petitioner that the private complainant delivered only once consisting of 570 bags, without delivering another 570 bags, so as to complete his 1,140 bags total recoveries of rice, as required by controlling precedents particularly in "Gavieres vs. Administrators of Pena, 13 Phil. 449, and Balatbat vs. Tanjutco, 2 Phil. 182;" and
- 4) Whether or not the Sandiganbayan gravely erred in concluding that petitioner malversed the 570 bags in issuing the questioned decision and resolution, the same being contrary to proven facts and violative of his constitutional rights to due process of law and to be acquitted if his guilt is not proven beyond reasonable doubt.[18]

Under Section 7 of Presidential Decree No. 1606, in relation to Rule 45 of the Rules of Court, the factual findings of the Sandiganbayan are generally binding upon this Court. The general rule is, however, subject to some exceptions, that is, (1) when the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record.[19]

The petition clearly indicates that petitioner questions the conclusions of the Sandiganbayan insofar as its appreciation of the evidence and the facts is concerned, thereby relying on the exceptions to the rule that our appellate review is generally limited to questions of law. We find that the exceptive situations invoked by petitioner are not present in this case.

The Sandiganbayan relied on the fact that the ricemiller, Badayos, was able to account for the 570 bags of palay

from the NSDC warehouse under WSRs Nos. 137290-92 and was, in fact, subsequently issued a WSIs Nos. 475470-72 which conclusively showed that he was no longer accountable for the rice stocks.

On the other hand, petitioner, while admitting that he was the GSCO in charge of the NSDC and the Barredo warehouses, points to Eduardo Berebe, the NFA milling supervisor, as the one responsible for the error in documentation which resulted in the questioned cancellation of only the accounting copies of the NSDC WSRs. The Sandiganbayan, however, correctly appreciated the fact that petitioner allowed Berebe, as the milling supervisor assigned to the Barredo and NSDC warehouses which were under petitioner's custody and responsibility, to cancel the accounting copies of NSDC WSRs Nos. 137290-92 without cancelling WSIs Nos. 475470-72, and replace them with the Barredo WSIs Nos. 478487-89. Logically, therefore, the Barredo warehouse would not and should not reflect any shortage if such cancellation was indeed correctly made only because of clerical errors.

The fact is that petitioner's own "Consolidated Summary of Rice Accountability of Badayos Rice Mill, San Nicolas, Pilar, Capiz, covering January 29, 1981 to September 30, 1981"[20] showed that NFA, Bacolod City received the 570 bags covered by WSRs Nos. 137290--92 with the corresponding WSIs Nos. 475470-72 of the NSDC warehouse, per Bill of Lading No. 005071. Hence, respondent court correctly concluded that petitioner and Berebe knew that the supposed erroneous documentation was not true and the replacement of the aforesaid WSRs and WSIs was irregular and unauthorized. In fact, under the "TITO" arrangement, there was no actual transfer or custody of stock but only paperwork was involved.

Finally, petitioner failed to satisfactorily explain away the existence and significance of the aforesaid certification he issued on November 19, 1981 wherein he attested to the receipt by the NSDC Warehouse of 570 bags of rice from Badayos in this manner:

"TO WHOM IT MAY CONCERN

This is to certify that NSDC Warehouse receives (sic) stocks delivery from Badayos Rice Mill as NFA share during the milling of MPI covering the period from May 4, 1981 to June 11, 1981, to wit:

DATE

VARIETY

WSR NO.

BAGS

NET KILOS

110681

WM1950

137290

300

15,000.00

-do-

-do-

291

200

13,000.00

(sic)

-do-

-do-

292

70

3,500.00

Total

--

570

28,500.00

CERTIFIED BY:

(SGD) EDWIN B. VILLANUEVA

(t) EDWIN B. VILLANUEVA

Opn's. Officer-GSCO

NSDC/Barredo Warehouses."[21]

Another certification, dated November 26, 1982, was issued by petitioner, as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that my GSCO copy of NSDC Warehouse WSR Nos. 137290, 137291 and 137292 were not cancelled up to the present per verification made by Atty. Rudy M. Villareña of COA-NFA, Central Office-Quezon City.

CERTIFIED BY:

(Sgd.) EDWIN B. VILLANUEVA

(t) EDWIN B. VILLANUEVA

Opn's. Officer-GSCO

NSDC/Barredo Warehouses."[22]

We agree that these certifications amply support the prosecution's position that NSDC WSRs Nos. 137290-92 and NSDC WSIs Nos. 475470-72 were never cancelled and could not, therefore, have been properly replaced by Barredo WSRs Nos. 139491-93 and Barredo WSIs Nos. 478487-89.

The findings of the Sandiganbayan are also further buttressed by the following investigation report of Atty. Rudy M. Villareña:

x x x

"(a) the 570 bags of rice represented by WSR Nos. 137290-137292 were really received by NSDC Warehouse; (b) the 570 bags of rice that were actually loaded was reflected in BL No. 05071 (sic); (c) the WSR Nos. 139491-93 were actually issued to Badayos by way of Handler's copies and the Carrier's copies were filed in Badayos' record at the Accounting Section of NFA Roxas City; (d) WSR Nos. 137290-92 were issued on June 10, 1981 while WSR Nos. 139491--93 were issued in replacement thereof more than a month later, or on July 25, 1981; (e) the 'Summary Statement of Stocks Account Liabilities of Badayos Covering the Period From January 28, 1981 To August 20, 1981' prepared and certified by the accused on November 19, 1981, showed that Miller/Contractor Badayos was only short of 6,325.12 kilos, or 126.50 bags; and (f) the footnotes in the accused's Warehouses Stock Reports, to the effect that WSR Nos. 137290-92 were cancelled, were not true because only the accounting copies were fraudulently cancelled by using a ballpen while the GSCO, Auditing and Carrier's copies were not cancelled. x x x" (Emphasis in original text.)[23]

Article 217 of the Revised Penal Code holds liable for malversation a public officer who shall appropriate public funds or property for which he is accountable, 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. Furthermore, it shall be prima facie evidence of malversation when a public officer fails to have duly forthcoming any public funds or property for which he is chargeable on demand by any duly authorized officer. That presumption of guilt is founded on human experience and is valid.[24]

In malversation, all that is necessary to prove is that the accused received in his possession public funds, that he could not account for them and did not give a reasonable excuse for the disappearance of the same. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily.[25]

Here, petitioner utterly failed to disprove the shortage as found in the records of the NFA. He merely alleged that there was an error in documentation, the responsibility for which he shifts to and claims to be the fault of one Eduardo Berebe. The alleged error, however, was not supported by any evidence other than his self-serving assertion, and is repudiated by his own certification of actual receipt of the stocks the shortage of which was initially imputed to the private complainant, Ernesto Badayos. What is apparent is that the cancellation is a scheme to conceal the irregularities and to enable petitioner to evade liability. It is undisputed that he was fully in charge and in complete control of the warehouse where the shortage arose. He cannot, therefore, claim that the milling supervisor should be the one to explain the said anomaly under the circumstances obtaining in this case.

Upon the evidence, then, the guilt of petitioner has to be pronounced and he must suffer the consequences of his act, with the mitigating circumstance of his voluntary surrender to the Regional Trial Court of Mambusao, Capiz prior to the service of the order of arrest upon him, which fact should be appreciated in extenuation of his criminal liability.

WHEREFORE, being in accord with the evidence and the law, the judgment under review is hereby **AFFIRMED** in toto, with costs against petitioner.

SO ORDERED.

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

* Deemed impleaded and accordingly included in the caption of the case.

- [1] Original Record, 1.
- [2] Rollo, 44-45.
- [3] Exhibit E.
- [4] Exhibit F.
- [5] Exhibit H.
- [6] Exhibit I.
- [7] Exhibit J.
- [8] TSN, Marta, August 28, 1989, 11-13.
- [9] Exhibit E.
- [10] TSN, Villanueva, August 29, 1982, 4-5.
- [11] Exhibit 17.
- [12] TSN, Villanueva, August 29, 1989, 8.
- [13] Ibid., 9-11.
- [14] Ibid., 12-13.
- [15] TSN, Marte, June 30, 1989, 6.
- [16] Rollo, 21-22.
- [17] Ibid., 47-48.
- [18] Ibid., 6-7.
- [19] Palma Gil vs. People, 177 SCRA 229 (1989).
- [20] Exhibit 18.
- [21] Rollo, 39-40.
- [22] Ibid., 40.
- [23] Ibid., 40-42.
- [24] Albores vs. Court of Appeals, et al., 132 SCRA 604 (1984).
- [25] De Guzman vs. People, et al., 119 SCRA 337 (1982).

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