

CONCEPCION DUMAGAT, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 96915. July 03, 1992

Ponente: NOCON, J.

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NOCON, J.:

Petitioner Concepcion Dumagat seeks the review of the decision of the Sandiganbayan in Criminal Case No. 14189, promulgated on January 23, 1991, finding her guilty beyond reasonable doubt of the crime of malversation of public funds.

Petitioner was the Special Disbursing Officer of the National Food Authority (NFA) of Zamboanga del Norte from 1982 to 1988. She was officially assigned at Sindangan, Zamboanga del Norte, although her official functions extend to the different stations of NFA, located at various points of Zamboanga del Norte, including the City of Dipolog, Tampilisan, Labason and others.

Sometime in May 1988, State Auditor I, Lilibosa P. Eway, conducted a spot audit examination of petitioner's cash and accounts in Dipolog City covering the period from May 31, 1986 to May 18, 1988. Petitioner having been found to have incurred a shortage of P98,122.51, a formal letter of demand was sent requiring her to produce the missing funds.

On June 6, 1988 petitioner tendered P5,000.00, followed by P50,000.00 on June 7, 1988 and finally the remaining balance of P43,127.24 on June 30, 1988 to cover for the amount of shortage. Despite completing the amount of shortage, a complaint was filed against petitioner before the Office of the Ombudsman/Special Prosecutor. After conducting the preliminary investigation, Second Assistant City Prosecutor Charles D. Adraincem recommended dismissal of the complaint due to lack of prima facie case against petitioner.[1]

The dismissal was, however, disapproved by Deputy Special Prosecutor Jose De G. Ferrer and concurred in by Acting Special Prosecutor Jesus F. Guerrero. Hence, an information was filed before the Sandiganbayan charging petitioner to have "wilfully, unlawfully and feloniously misappropriated, misapply, embezzle and take away . . . the total amount of NINETY EIGHT THOUSAND ONE HUNDRED TWENTY TWO PESOS AND 51/100 (P98,122.51) out of which said funds she appropriated and converted to her own personal use and benefit ..." [2]

After the parties had presented their evidence, the Sandiganbayan found petitioner guilty beyond reasonable doubt of the offense of malversation of public funds punishable under Article 217, paragraph 4 of the Revised Penal Code. Favoring her the mitigating circumstance of restitution, she was sentenced to suffer the indeterminate penalty of imprisonment from TEN (10) YEARS and ONE (1) DAY of prison mayor as minimum to SEVENTEEN (17) YEARS, FIVE (5) MONTHS of reclusion temporal as maximum, to suffer the penalty of perpetual special disqualification and to pay fine equal to the amount malversed.

The decision of the Sandiganbayan was anchored on the last paragraph of Article 217 of the Revised Penal Code, which provides:

"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."

and the case of *de Guzman vs. People*,^[3] where this Court said:

"In Malversation, all that is necessary to prove is that the defendant received in his possession public funds, that he could not account for them and did not have them in his possession and that he could 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."^[4]

Based on the above, the Sandiganbayan opined:

"Measured against these legal standards, we find that accused here had not overcome the presumption provided for by Article 217 of the Revised Penal Code that upon her failure to produce such public funds for which she is chargeable upon proper demand made upon her, she has put such missing funds to her personal use."^[5]

The court a quo found the gap from May 25, 1988 (her deadline to produce the missing funds) to June 6, 7, and 30 (the dates when she actually tendered the amount alleged to have been malversed) to be quite far apart to dispute the belief that petitioner had indeed appropriated said funds.^[6]

Other points raised by the Sandiganbayan were that the accused signed the report as "'true and correct report of the examination' without any reservation"^[7] and her failure to put in writing her request to be given more time to examine and reconcile her records.^[8]

However, the Sandiganbayan failed to consider the fact that the audit examination was done in Dipolog, when petitioner's official station was at Sindangan. Being a Special Collection/Disbursing officer of the NFA for Zamboanga del Norte, petitioner had also other offices in Siayan, Bacungan, Salug, Liloy, Labason and Tampilisan, aside from Dipolog. It also disregarded the fact that petitioner had two other vaults in Tampilisan and Sindangan, and the records, receipts, and cash contained therein were not made part of the audit report because the examination was confined to whatever records and papers that were found in Dipolog.^[9] Finally, the Sandiganbayan did not take cognizance of the fact that the prosecution admitted that all collections of the accused in Dipolog City were deposited by her with the cashier of the NFA, while all her collections in the other stations were deposited in the vaults assigned to her either in Sindangan or Tampilisan.

As a matter of fact, during the pre-trial, the prosecution admitted:

x x x

" . . . that there are two safety vaults in the office of the NFA located in Sindangan and Tampilisan used by the accused and assigned to her;

" . . . that all collections of the accused in Dipolog City were deposited by her with the cashier of the NFA, while all her collections in the other stations were deposited by her in the vaults assigned to her in Sindangan and Tampilisan;

" . . . that the audit was made in Dipolog City in the presence of the accused and lasted for one week from the notice to produce cash and cash items;

" . . . that the auditor served the letter of demand dated May 18, 1988 only after she had finished the audit and had come to know the exact amount of the alleged shortage and the accused requested for extension of time on which the auditor did not act;"^[10]

Considering the foregoing circumstances, We find merit in the appeal. Notably, no less than the Solicitor General recommended acquittal of the petitioner.[11]

This Court has held in the case of *Tinga vs. People*[12] that:

"x x x 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 great 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. Access to records must be afforded them within reasonable time after audit when disbursements are still fresh in their minds and not years after when relevant official records may no longer be available and the passage of time has blurred human memory."[13]

The audit examination conducted by Auditor Eway failed to establish that the funds were indeed missing since she did not follow standard auditing procedures by not including in her examination the funds petitioner kept in the vaults located in Tampilisan and Sindangan.

The Manual of Instructions to Treasurers and Auditors and Other Guidelines requires -

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

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."

On the other hand, Section 561 of the same Manual 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. x x x"

Since the audit examination left much to be desired in terms of thoroughness and completeness as there were accounts which were not considered, the same can not be made the basis for holding petitioner liable for malversation. Said the Solicitor General:

"For had the audit examination been complete and thorough (by including the records/documents in petitioner's other offices), [a] strong possibility exists the "missing" P98,122.51 could have been satisfactorily accounted for."[14]

Petitioner's signing of the audit report can not be considered *prima facie* evidence of her guilt. Following this Court's ruling in *Tinga*, *supra*, petitioner's signature thereon only meant an acknowledgement that a demand was made, but not to the statement of her accountability as the examination was not complete.[15]

On the other hand, her failure to immediately account for the alleged shortage is understandable considering the fact that petitioner was in-charge of eight NFA stations, which are 86 km. to 160 km. away from Dipolog. This Court observed that the entreaties and explanations made by petitioner that Auditor Eway accompany her to the

different NFA stations to support her claims on the existence of the money deposited therein fell on deaf ears.

Thus, the ruling in *Tinga* that "[t]he prima facie presumption under Article 217 of the Revised Penal Code arises 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,"^[16] has no application in the instant case in the light of the haphazard examination of the cash accountability of petitioner in violation of the Manual of Instructions to Treasurers and Auditors and the credible explanation of petitioner that the "missing" funds would have been "discovered" if only the auditor took into consideration the contents of the two vaults in Sindangan and Tampilisan and the fact that her collection in Dipolog City were deposited with the NFA Cashier.

Considering the foregoing, We find that the guilt of the petitioner has not been proved beyond reasonable doubt, and hence should be acquitted of the crime charged.

WHEREFORE, the decision of the Sandiganbayan is hereby REVERSED AND SET ASIDE and the petitioner is hereby ACQUITTED of the crime of Malversation of Public Fund. Cost de officio.

SO ORDERED.

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

[1] Annex "B".

[2] Decision, p. 2.

[3] L-54288, 119 SCRA 337 (1982).

[4] *Id.*, at 347. Underscoring supplied.

[5] Decision, p. 15.

[6] *Id.*, p. 16.

[7] *Id.*, p. 17, citing Exhibit "A-G".

[8] *Id.*, p. 17.

[9] These facts were admitted by the prosecution during the pre-trial conference. Decision, p. 6.

[10] *Id.*, p. 5-7.

[11] Rollo, p. 93-105.

[12] L-57650, 160 SCRA 483 (1988).

[13] 160 SCRA, at 491. Underscoring supplied.

[14] Comment, p. 11.

[15] 160 SCRA, at 489.

[16] 160 SCRA, at 488.

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