

OSCAR VALLE Y CARREON, PETITIONER, VS. SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 97651. October 13, 1992

Ponente: NOCON, J.

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NOCON, J.:

Petitioner Oscar Valle y Carreon, then OIC Municipal Treasurer of Talisay, Province of Batangas, stands charged within the Sandiganbayan with the crime of Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, in an information[1] which reads:

“That on or about the 12th day of November 1986 in the Municipality of Talisay, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the said accused being then the Municipal Treasurer of the aforesaid municipality, and as such, he is accountable for public funds or property, incur cash account shortage as of November 12, 1986 on General Fund, Infrastructure Fund, Special Education Fund and Trust Fund, which were disallowed credits to accountability representing missing vouchers, to wit:

- 1) General Fund P 6,151.50
- 2) Infrastructure Fund P 472.50
- 3) Special Education Fund P10,078.00
- 4) Trust Fund P 3,000.00

in the total amount of Nineteen Thousand Seven Hundred Two Pesos (P19,702.00), but the said missing vouchers remained unliquidated and/or no accounting thereof having been rendered by the accused up to this date, despite prior written demand, in violation of existing government accounting and auditing rules and regulations.”

Upon arraignment, petitioner pleaded not guilty to the crime charged against him.

After trial on the merits, the Sandiganbayan (Second Division) rendered its decision on March 6, 1991[2] convicting herein petitioner of the crime charged, the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered finding accused Oscar Valle y Carreon GUILTY beyond reasonable doubt as principal in 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 circumstance of voluntary surrender without any aggravating circumstance in offset, and further applying the benefits of the Indeterminate Sentence Law, hereby sentences him to suffer an 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 P19,702.00 equal to the amount malversed; to indemnify the Republic of the Philippines in the same amount of P19,702.00, and to pay the costs of this action.

SO ORDERED.”[3]

Petitioner contends that his guilt for the crime of Malversation of Public Funds has not been proven beyond reasonable doubt, hence, this appeal by way of a Petition for Review on Certiorari.

We find no merit in the petition.

It is undisputed that petitioner failed to present twelve (12) vouchers corresponding to the alleged disbursement in the amount of P19,702.00. A verbal demand[4] was made upon him by the assigned Auditor, Lucila Rosales, to produce said vouchers but the petitioner replied that they were in the Office of the Municipal Mayor of Talisay, Batangas for signature.[5] On cross-checking with the Mayor, the latter denied the allegation of Valle, claiming that there are no vouchers in his office for his signature.[6]

In fact, petitioner admitted doing nothing after he was audited on November 12, 1986 and despite the demand letter sent to him.[7]

Edgardo Mendoza, bookkeeper of the Municipal Treasurer's Office of Talisay, Batangas whose duty was to record all vouchers of the Municipality in the Journal of Cash Disbursements,[8] testified that the twelve (12) alleged missing vouchers were never presented to him by Valle hence, the same were not recorded in the Journal of Cash Disbursement. It was only after the audit examination by the COA and upon the instructions of Auditor Lucila Rosales that he entered the alleged twelve (12) missing vouchers in the Journal of Cash Disbursements based on the entries in petitioner's cashbook, with a note however that "no vouchers" were actually presented in support thereof.[9] This was further corroborated by the testimony of Auditor Lucile Rosales that when the audit examination was conducted, the alleged twelve (12) missing vouchers were not recorded in the Journal of Cash Disbursement.[10]

There is no dispute therefore, that the questioned transactions totaling P19,702.00 were not supported by vouchers.

As aptly found by the respondent court:

"In the case at bar, accused's alleged disbursements of public funds which are under his custody and for which he is responsible were patently made without compliance of the aforesaid basic requirements to ensure their legality and propriety. Notably missing are the requisite RIVs, bidding and canvass papers, purchase orders, sales invoices/delivery receipts, certificates of inspection and disbursement of vouchers.

Thus, the loss and/or disappearance of public funds under the custody of the accused amounting to P19,702.00 not having been satisfactorily explained, notwithstanding the testimonies of the defense witness, and it further appearing that the disbursements allegedly made by him were in gross violation of pertinent laws and regulations, then accused's liability for the missing funds must be adjudged under Article 217 of the Revised Penal Code x x x."

Article 217 of the Revised Penal Code 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 of the misappropriation or malversation of such funds or property shall suffer:

x x x x x x x x

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 uses.”

Petitioner has failed to rebut the prima facie presumption that he has put the missing funds to personal use. What we have is only his denial without any corroborating evidence to support the same. His denial, however, is belied by the evidence on record.

In the crime of malversation, all that is necessary for conviction is proof that the accountable officer had received public funds and that he did not have them in his possession when demand therefore was made.[11] There is even no need of direct evidence of personal misappropriation as long as there is a shortage in his account and petitioner cannot satisfactorily explain the same.[12]

On the matter whether petitioner is entitled to the mitigating circumstance of voluntary surrender, We agree with the court a quo that he is entitled to the same since there is nothing in the records to show that petitioner had been arrested prior to his posting of a cash bail bond.

The penalty imposed by the lower court needs slight modification. The penalty for malversation of public funds or property under Article 217 of the Revised Penal Code, when the amount involved is more than P12,000 but is less than P22,000 is reclusion temporal in its medium and maximum period.[13] Applying the Indeterminate Sentence Law, the imposable penalty is TEN (10) YEARS AND ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of reclusion temporal as maximum.

WHEREFORE, there being no reversible error in the judgment appealed herefrom, the same is hereby AFFIRMED but MODIFIED as to the penalty imposed upon petitioner. Applying the Indeterminate Sentence Law, petitioner is ordered to suffer the penalty of TEN (10) YEARS AND ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of reclusion temporal, as maximum; perpetual special disqualification; to pay a fine of P19, 702.00 equal to the amount malversed; to indemnify the Republic of the Philippines the amount of P19,702.00, and to pay the costs.

SO ORDERED.

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

[1] Records, pp. 1-2.

[2] Penned by Justice Romeo M. Escareal, concurred by Justice Jose S. Balajadia and Justice Nathanael M. Gorospe.

[3] Rollo, pp. 26-50.

[4] T.S.N., September 26, 1989, p. 16.

[5] Ibid.

[6] Id, at p. 17.

[7] T.S.N., January 25, 1990, pp. 12-13.

[8] T.S.N., September 26, 1989, p. 29.

[9] T.S.N., March 14, 1990, pp. 13-14.

[10] T.S.N., September 26, 1989, p. 14.

[11] Leonardo N. Estepa vs. Sandiganbayan, and the People of the Philippines, G.R. No. 59670, 182 SCRA 269, (1990).

[12] Ibid.

[13] Article 217, No. 4, as amended by Republic Act No. 1060.

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