

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PORFERIO M. PEPITO, ACCUSED-APPELLANT.

G.R. Nos. 112761-65. February 03, 1997

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant PORFERIO PEPITO appeals from the Decision of the trial court convicting him of Malversation of Public Funds through Falsification of Official Documents on five (5) counts.

Appellant, as Acting Postmaster of Iligan City, was charged with misappropriating government funds by manipulating his records and making it appear that he paid a number of postal money orders although no such payments were made. Appellant was found short in his cash accounts, as follows: (a) P23,643.73 for October 1975;[1] (b) P11.07 for December 1975;[2] (c) P7,283.59 for the month of January 1976;[3] (d) P30,052.25 for April 1976, and;[4] (e) P42,302.97 for May 1976.[5]

Except for the dates and amounts involved, appellant was similarly charged in five (5) separate Informations[6] as follows:

“That sometime during the month of _____, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Porferio Pepito, Acting Postmaster of Iligan City, with official station thereat, and as such accountable officer, responsible for funds collected and received by him by reason of his position, did then and there wilfully, unlawfully and fraudulently and with grave abuse of confidence, misappropriate, embezzle and take away government funds in his possession in the amount of _____ accused employing deceit, false manifestation and fraudulent misrepresentations, manipulated his records to make it appear that on the month of _____, the Money Order Paid by him was _____, although his payments amounted only to _____, making untruthful statements in a narration of facts and that by virtue of such falsification in his record of payments, the said accused successfully appropriated and converted to his own personal use and benefit the sum of _____, to the damage and prejudice of the Bureau of Post, Manila, Philippines, in the aforementioned amount of _____.

Contrary to and in violation of Article 217 and Article 171 of the Revised Penal Code.”

First, the facts. In a letter,[7] dated August 5, 1976, CESAR L. JUAN, Regional Director of the Bureau of Posts, Region X, Cagayan de Oro City, requested the Office of the City Auditor, Iligan City, to audit the accounts of appellant PORFERIO PEPITO, Acting Postmaster of Iligan City. Earlier, an audit team from the Office of Regional Director Juan uncovered certain anomalies regarding appellant’s postal money order transactions at the Iligan City Post Office. However, due to lack of time, the team failed to determine the exact figure involved in the anomaly. Hence, their request for assistance from the City Auditor’s Office.[8]

Iligan City Auditor FRANCISCO APARECE immediately formed an audit team composed of Assistant City Auditor HONORIO N. PABLICO and Auditor ROMULO ORBE.[9] They started their audit on August 19, 1976

and concentrated on the postal money order transactions of appellant. They examined the cash in appellant's possession and verified the records of the postal money orders (PMOs), the payment of these checks, and all depository funds of said post office in government banks and in the Bureau of Posts, Manila, covering the period from July 1, 1975 to August 9, 1976.[10]

Asst. Auditor Pablico outlined the procedure for payment of postal money orders, thus: The postmaster pays the postal money order (PMO) upon presentation to him. The PMO paid cards, evidencing payment of the PMOs, are then kept by the postmaster as custodian. The postmaster then prepares a list of the PMOs he paid for a period of fifteen (15) days. Hence, in a month, the postmaster prepares two (2) lists or records of payment: one for the first fifteen days of the month, and another list for the next fifteen days. The PMO paid cards and the lists are then sent to the central office of the Bureau of Posts in Manila for safekeeping. A copy of each list is sent to the Regional Office of the Bureau of Posts, another copy is sent to the City Auditor's Office and the last copy is retained by the Postmaster himself.[11]

The audit team verified the total amount of PMO payments appearing on the lists or records prepared by appellant. They totalled the daily PMO payments of appellant and cross-checked them with appellant's entry on the cash book. These reveal the total money order payments of appellant for the month. After totalling the PMO payments of the postmaster per month, the audit team requested the Central Office of the Bureau of Posts in Manila, through its regional office, to furnish them the PMO paid cards, evidencing payments of the PMOs during the period covered by their audit.[12]

Upon receipt of the PMO paid cards, the audit team cross-checked the paid cards with the record of the PMOs allegedly paid by appellant. They discovered that some PMOs were listed as paid but were not supported by paid cards. The audit team uncovered these discrepancies for the months of October and December, 1975 and for the months of January, April and May, all of 1976. Based on the records, the total PMOs paid by appellant during the period covered by the audit was P494,720.85, but only P250,090.60 was supported by PMO paid cards. The balance of two hundred forty-four thousand six hundred thirty pesos and twenty-five centavos (P244,630.25) was disallowed in audit for lack of supporting documents. Hence, the cash shortage in appellant's account.[13] Appellant asked the auditors to double-check their findings but the audit team came out with the same result.

In a letter[14] dated February 25, 1977, the audit team informed appellant of the shortage in his cash accounts. They demanded from appellant the immediate restitution of the missing funds and an explanation why no criminal and administrative sanctions should be taken against him.[15] No action was taken by appellant to restore and explain his shortage of funds. Hence, five (5) criminal Informations for malversation of public funds through falsification of official documents were filed against him.

After the prosecution formally offered its evidence and rested its case on December 18, 1978, the continuation of the hearing for the presentation of the defense evidence was suspended due to the transfer of then Presiding Judge Leonardo I. Cruz to Angeles City.

It was only after two (2) years, or on August 13, 1982, that continuation of the trial resumed for the presentation of the defense evidence. However, on the scheduled date of hearing, appellant, through counsel, filed a motion to suspend the trial[16] on the ground that he has applied for and was conditionally granted an amnesty under P.D. 1082 by the 11th Amnesty Commission of Marawi City, Lanao del Sur, for said cases. Appellant prayed that pursuant to Section 6 of P.D. 1082, further proceedings in his cases be held in abeyance pending final approval of his conditional amnesty by the President of the Philippines.

The fiscal opposed[17] the motion on the ground that the conditional amnesty of appellant was spurious for it was issued by a person not duly authorized for the purpose.

Resolution of this motion was deferred for six (6) years with the subsequent reorganization of the judiciary and the re-raffling of appellant's cases. Finally, in an Order,[18] dated September 9, 1988, appellant's motion to suspend the trial of the cases was set for hearing by the new presiding Judge Tago M. Bantuas. However, on the date set, appellant's counsel failed to appear. Judge Bantuas continued with the hearing of appellant's motion and denied appellant's motion to suspend the trial. The continuation of the hearing of the cases was set on January 10, 1989. Upon receipt of the Order and Notice of Hearing, appellant's counsel, Atty. Dimnatang T. Saro, filed a motion to postpone the hearing due to conflict of schedule.[19]Hearing was thus reset to February 7, 1989.[20]

Again, a series of motions to defer the hearing was filed at appellant's instance and granted by the trial court. It was only on January 24, 1992 that the new presiding Judge Maximino Magno-Libre issued an Order admitting the evidence offered by the prosecution.[21]On July 14, 1992, the defense commenced to adduce its evidence and presented appellant as its lone witness.

On the stand, appellant denied there was shortage in his cash accounts. After he was informed of the missing funds, he asked the audit team to re-examine the records for his cash on hand has always tallied with his cashbook. His office had been subjected to various regular audit examinations by different offices, namely: the Bureau of Treasury, the District Postal Inspector, the Postal Audit Examiners and the Iligan City Auditor's Office. None of these offices found any irregularity in his accountabilities. He urged that there must have been some error or inaccuracy in the conduct of the audit. He further charged that the malversation cases were filed against him for political reasons for the late Governor Arsenio Quibranza had a grudge against his son-in-law.[22]

Appellant admitted that when he was found short in his cash accounts, he applied for amnesty under P.D. 1082. When he was informed by then Presiding Judge Dalisay and Prosecutor Lagcao that he would have to admit his guilt in his application for amnesty since amnesty presupposes the commission of a crime, he still proceeded with his application for his friends in Lanao del Sur assured him that his amnesty would be immediately processed and approved. His conditional amnesty has been granted but it is still pending final approval by the President for allegedly there is someone in Manila who is blocking the grant of his amnesty.[23]

After trial, the court rendered judgment[24] on September 8, 1993 finding appellant guilty of the crime charged. The dispositive portion reads:

WHEREFORE, in accordance with the provisions of Article(s) 217, 171, in relation to Article 48 of the Revised Penal Code, the Court finds accused guilty on all the five (5) counts he is charged (with) and is hereby sentenced, to wit:

"1. As to Criminal Case No. 277, since the amount misappropriated is P23,643.73, accused should be penalized according to the penalty provided in Paragraph No. 4 of Article 217 of the Revised Penal Code which is reclusion temporal maximum to reclusion perpetua. Since according to Article 48 of the Revised Penal Code, the penalty for the most serious crime shall be applied in its maximum period, accused is meted out a penalty of reclusion perpetua.

"2. As to Criminal Case No. 278, considering that the amount misappropriated was P11.07, according to Article 48 of the Revised Penal Code, the penalty for the most serious crime shall be imposed in its maximum period, thus, accused should be meted out the penalty prescribed in Article 171 and in applying the provisions of the indeterminate sentence law, accused should be meted the indeterminate prison terms of six (6) years prison correccional to twelve (12) years prison mayor.

"3. As to Criminal Case No. 274, since the amount malversed was P7,283.79, accused should be penalized according to Paragraph No. 3 of Article 217 of the Revised Penal Code and should be meted out an indeterminate penalty of ten (10) years and one (1) day of prison mayor to fourteen (14) years and eight (8) months of reclusion temporal.

“4. As to Criminal Case No. 275, considering that the amount misappropriated is P30,052.20, the penalty imposed should be akin to the penalty prescribed in Criminal Case No. 277 mentioned in Paragraph 1 hereof, which is reclusion perpetua; and

“5. As to Criminal Case No. 276, considering that the amount subject of malversation is P37,558.30, then the necessary penalty of reclusion perpetua should also be meted out against accused.

“Finally, accused is also hereby ordered to pay the government the total sum of P98,549.99, which is the aggregate government funds actually misappropriated, for restitution in accordance with Article 104 of the Revised Penal Code.

SO ORDERED.”

Hence this appeal where appellant contends that:

I. THE TRIAL COURT ERRED IN DENYING THE ACCUSED-APPELLANT’S MOTION TO SUSPEND THE PROCEEDINGS OF THE CASES PENDING FINAL ACTION ON THE CONDITIONAL AMNESTY GRANTED TO THE APPELLANT;

II. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES OF MALVERSATION OF PUBLIC FUNDS THRU FALSIFICATION OF OFFICIAL DOCUMENTS; AND

III. THE TRIAL COURT ERRED IN FAILING TO CONSIDER VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED-APPELLANT.

First. Appellant charges that the trial court erred in denying his motion to suspend the proceedings in these cases pursuant to Section 6 of P.D. 1082.[25] Hence, the proceedings of the trial court are null and void and the judgment of conviction against him should be vacated.

We do not subscribe to appellant’s contention. On the date scheduled for hearing of his motion, appellant’s counsel failed to appear and substantiate the allegations in his motion. The trial court proceeded with the hearing of the motion, found no merit thereto and denied the same. Appellant’s counsel received a copy of the Order of denial and was notified of the continuation of the hearing of said cases. Appellant did not challenge the correctness of this ruling by way of a petition for certiorari and prohibition with the Court of Appeals.[26] Instead, he proceeded to adduce evidence in his defense. After more than fifteen (15) years of trial of his cases, appellant cannot now impugn the Order of the court denying his motion to suspend his prosecution.[27]

Second. Appellant contends that there was no clear showing that he misappropriated the missing funds. Allegedly, his office has been regularly audited by different agencies and none has found him short in his accountabilities. He insists on the inaccuracy of the audit report of the City Auditor’s Office which examined his cash and accounts.

We find no merit in the contention. It is settled that in cases of malversation of public funds, the mere 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, is prima facie evidence that he has put such funds or property to personal use[28]. An accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his accounts which he is unable to explain.[29] Indeed, to justify conviction for malversation of public funds, the prosecution has only to prove that the accused received public funds or property and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for the disappearance of the same.[30]

In the case at bar, all the elements of malversation of public funds are present, viz: (a) the offender is a public

officer, (b) he had custody or control of the funds or property by reason of the duties of his office, (c) these funds or property were public funds or property for which he was accountable, and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence permitted another person to take them.[31]Appellant, as Acting Postmaster of Iligan City has custody of the funds of his Office. A portion of these funds was used in the payment of postal money orders (PMOs) presented to him. As evidence of these payments, the Postmaster accomplishes the PMO paid cards and makes a list of the PMOs he paid for a given period. These lists and paid cards are then sent to the Central Office of the Bureau of Post for safekeeping. An audit of the PMO transactions of appellant, however, disclosed that some of his PMO payments were not supported by PMO paid cards.

Appellant's assertion that the audit made by the Office of Iligan City Auditor was inaccurate remains an unsubstantiated allegation. Although appellant insisted on this alleged inaccuracy during the trial, he cannot point to the specific procedure where the auditors erred in examining his accountabilities.[32] Noticeably, appellant did not present any document to show that the audit of other government agencies covered also the PMO transactions of the post office for the same period covered by the audit of the City Auditor.

Appellant also faults the trial court for considering as an admission of guilt his application for amnesty under P.D. 1082. Regardless of this consideration, however, the totality of the prosecution evidence has proved the guilt of appellant beyond reasonable doubt. The testimonies of the auditors and the documentary evidence adduced clearly proved appellant's shortage of funds and his corresponding liability therefor as an accountable officer. The testimonial and documentary evidence of the prosecution were not successfully rebutted by the defense.

Finally, appellant contends that the trial court failed to consider in his favor the mitigating circumstance of voluntary surrender. Allegedly, he voluntarily surrendered to the court of justice and posted bail for his provisional liberty before a warrant for his arrest could be issued.

The rule is clear that for the mitigating circumstance of voluntary surrender to be appreciated, it must be proven that the accused freely placed himself at the disposal of law enforcing authorities. The records confirm that appellant was arrested and detained by the INP Station of Marawi City for the crimes charged upon the issuance of the Order[33] for his arrest on February 9, 1978. Appellant was only released from custody[34] upon the approval of his bailbond on March 27, 1978. Under the circumstances, appellant cannot be credited with the mitigating circumstance of voluntary surrender.

IN VIEW WHEREOF, the Decision of the trial court convicting appellant PORFERIO M. PEPITO for five (5) counts of Malversation of Public Funds Through Falsification of Official Documents is AFFIRMED. Costs against appellant.

SO ORDERED.

Regalado, (Chairman), Romero, Mendoza and Torres, Jr., JJ., concur.

[1]Information, Crim. Case No. 277; Original Records, p. 434.

[2] Information, Crim. Case No. 278; Original Records, p. 454.

[3] Information, Crim. Case No. 274; Original Records, p. 1.

[4] Information, Crim. Case No. 275; Original Records, p. 394.

[5] Information, Crim. Case No. 276; Original Records, p. 414.

[6] Original Records, p.1.

- [7] Original Records, p.147.
- [8]TSN, July 28, 1978, pp.179-180.
- [9] Original Records, p.109; TSN, July 28, 1978, pp.6-8, 171-172.
- [10] TSN, July 28, 1978, pp.9-11.
- [11] Id., pp. 21-25.
- [12]Id., pp. 28-33.
- [13] Id., pp. 35-70.
- [14] Exhibit “L”, Original Records, p.146.
- [15] Id., pp. 71-74.
- [16]Original Records, pp.194-196.
- [17]Opposition, dated November 2, 1982; Original Records, p. 207.
- [18] Original Records, p.223.
- [19] Id., p. 247.
- [20]See Order, dated January 10, 1989; Original Records, p.254.
- [21]Original Records, p.284.
- [22] TSN, June 14, 1992, pp.6-36, 39-41.
- [23]Id., pp. 37-41.
- [24]Penned by Judge Maximino Magno-Libre, Regional Trial Court, Lanao del Norte, 12th Judicial Region, Branch V, Iligan City; Rollo, pp.90-100.
- [25] “SEC. 6. Pending Cases. - The investigation and trial of criminal cases against persons who apply for amnesty pursuant to this Decree shall be held in abeyance until their applications for amnesty shall have been finally acted upon in accordance hereof.”
- [26] Fortich-Celdran, et al. v. Celdran, et al., 19 SCRA 502.
- [27] It is also well to note that as per the testimony of appellant himself, the conditional amnesty granted to him by the Amnesty Commission way back June 5, 1977 is still pending final approval by the President of the Philippines; TSN, June 14, 1992, p. 39.
- [28] Article 217, last paragraph, Revised Penal Code; Agbanlog v. People, G.R. No. 105907, May 24, 1993, 222 SCRA 530.
- [29] Navallo v. Sandiganbayan, G.R. No. 97214, July 18, 1994, 234 SCRA 175; Cabello v. Sandiganbayan, G.R. No. 93885, May 14, 1991, 197 SCRA 94.
- [30] Felicilda v. Grospe, G.R. No. 102494, July 3, 1992, 211 SCRA 285.
- [31] Agbanlog v. People, 222 SCRA 530.
- [32] TSN, June 14, 1992, pp. 26 & 34.

[33] Original Records, p.55.

[34] Order of Release, dated March 27, 1978, Original Records, p.56.

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