

**RENE P. PONDEVIDA, PETITIONER, VS. THE HON. SANDIGANBAYAN
(THIRD DIVISION) AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

G.R. NOS. 160929-31. August 16, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On April 11, 2003, the Sandiganbayan rendered judgment in Criminal Cases Nos. 24375 to 24377 convicting petitioner Rene Pondevida, the Municipal Treasurer of Badiangan, Iloilo, of three counts of the complex crime of malversation of public funds through falsification of commercial documents, and sentencing him to suffer the penalty of reclusion perpetua and perpetual special disqualification for each count. The fallo of the decision reads:

WHEREFORE, in Criminal Case No. 24375, the Court hereby finds the accused RENE P. PONDEVIDA GUILTY beyond reasonable doubt of the complex offense of Malversation of Public Funds thru Falsification of commercial document defined and penalized under Arts. 48, 171 and 217 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA and PERPETUAL SPECIAL DISQUALIFICATION in accordance with Art. 31 of the Revised Penal Code and to pay a fine of P213,700.00 and indemnify the Municipal government of Badiangan the sum of P213,700.00, with costs.

For insufficiency of evidence and for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DONATO M. AMIGABLE and VICTOR N. GRANDE are hereby ACQUITTED of the offense charged in this case, and their bail bonds posted for their provisional liberty are hereby ordered cancelled.

In Criminal Case No. 24375, the Court hereby finds the accused RENE P. PONDEVIDA GUILTY beyond reasonable doubt of the complex offense of Malversation of Public Funds through Falsification of commercial document defined and penalized under Arts. 48, 171 and 217 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUAL and PERPETUAL SPECIAL DISQUALIFICATION in accordance with Art. 31 of the Revised Penal Code and to pay a fine of P503,287.89 and indemnify the Municipal government of Badiangan the sum of P503,287.89, with costs.

For insufficiency of evidence and for failure of the prosecution to prove his guilt beyond reasonable doubt, accused DONATO M. AMIGABLE is hereby ACQUITTED of the offense charged in this case, and the bail bond posted for his provisional liberty is hereby ordered cancelled.

In Criminal Case No. 24377, the Court hereby finds the accused RENE P. PONDEVIDA GUILTY beyond reasonable doubt of the complex offense of Malversation of Public Funds thru Falsification of commercial document defined and penalized under Arts. 48, 171 and 217 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA and PERPETUAL SPECIAL DISQUALIFICATION in accordance with Art. 31 of the Revised Penal Code and to pay a fine of P115,153.55 and indemnify the Municipal government of Badiangan the sum of P115,153.55, with costs.

For insufficiency of evidence and for failure of the prosecution to prove his guilt beyond reasonable doubt, accused DONATO M. AMIGABLE is hereby ACQUITTED of the offense charged in this case, and the bail

bond posted for his provisional liberty is hereby ordered cancelled.

Considering that accused NORMA B. TIU is still-at-large, let Criminal Case No. 24376 be ARCHIVED until her arrest.[1]

The anti-graft court granted the petitioner an extension of time within which to file a motion for reconsideration of its decision, until May 10, 2003. The said motion was filed on May 9, 2003 which the said court resolved to deny on September 5, 2003. The petitioner received a copy of the said resolution on September 16, 2003, and filed his Notice of Appeal[2] on September 23, 2003 "pursuant to paragraph (b), Section 1 of Rule X of the Revised Internal Rules of the Sandiganbayan." In a Resolution[3] dated October 3, 2003, the Sandiganbayan denied due course to the petition for having been filed out of time, thus:

FROM THE FOREGOING, the Notice of Appeal shall no longer prosper considering that it was filed out of time and considering further that the Decision rendered in these cases, promulgated on April 11, 2003, in so far as Rene P. Pondevida is concerned, has already become final and executory on September 18, 2003.

Atty. Lily V. Biton, the Division Clerk of Court, is ordered to furnish the Director of Prison, National Penitentiary, Muntinlupa City, a copy of this Resolution for his perusal, and to issue the corresponding Commitment Order for Rene P. Pondevida's service of sentence.

The Sandiganbayan ruled that under Section 6, Rule 122 of the Revised Rules of Criminal Procedure, Pondevida had only until September 17, 2003 within which to file his notice of appeal, but did so only on September 23, 2003; by then, its decision had become final and executory.

The petitioner received a copy of the said resolution on October 14, 2003. On December 15, 2003, he filed his petition for certiorari before this Court, alleging that -

I

THE SANDIGANBAYAN HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED THE PETITIONER'S NOTICE OF APPEAL BECAUSE THE NOTICE OF APPEAL HAS BEEN FILED WITHIN THE REGLEMENTARY PERIOD.

II

PETITIONER WAS DEPRIVED OF DUE PROCESS.

III

THE APPEAL IS SUPPORTED BY MERITORIOUS GROUNDS AND THE CASE IS ENTITLED TO BE REVIEWED BY THE APPELLATE COURT.[4]

On January 10, 2005, this Court resolved to give due course to the petition and required the Sandiganbayan to elevate the records of the cases.[5] The Sandiganbayan complied and forthwith elevated the records to this Court.

The petitioner maintains that his notice of appeal was filed on time. He posits that the Sandiganbayan should have applied Section 1(b), Rule X of its Revised Internal Rules, instead of Section 6, Rule 122 of the Revised Rules of Criminal Procedure. The petitioner argues that since Section 1(b), Rule X of the Revised Internal Rules of the Sandiganbayan does not provide a period within which to appeal a decision or final order rendered by it, the applicable rule is that provided in Section 1(a) of the said Internal Rules, in relation to Rule 45 of the Rules of Civil Procedure. The petitioner avers that under the latter rule, he had fifteen (15) days from receipt of notice of the September 5, 2003 Sandiganbayan Resolution (on September 16, 2003), or until October 1, 2003, within which to file his notice of appeal. Hence, his notice of appeal filed on September 23, 2003 was timely filed.

For its part, the Office of the Special Prosecutor (OSP) avers that under Section 1, Rule X of the Internal Rules of the Sandiganbayan, in relation to Rule 45 of the Rules of Court, an appeal from a Sandiganbayan judgment where

the accused is sentenced reclusion perpetua or life imprisonment is via petition for review on certiorari; the period for appeal is that provided for in Section 6, Rule 122 of the Revised Rules of Criminal Procedure, thus:

1.c. As aptly stated by petitioner, the method of appeal in this case is by petition for review on certiorari. This, indeed, is confirmed by Section 1, Rule X of the Revised Internal Rules of the Sandiganbayan, i.e., "A party may appeal from a judgment or final order of the Sandiganbayan imposing or affirming a penalty less than death, life imprisonment or reclusion perpetua in criminal cases, and in civil cases, by filing with the Supreme Court a petition for review on certiorari in accordance with Rule 45 of the 1997 Rules of Civil Procedure." [6]

The OSP cited the ruling of this Court in *Formilleza v. Sandiganbayan* [7] to support its position.

The petitioner's contention, that the remedy from the Sandiganbayan decision which sentenced him to reclusion perpetua is via notice of appeal under Section 1(b), Rule X of the Revised Internal Rules of the Sandiganbayan, is correct. The rule reads:

(b)

Exception. - Where the judgment or final order of the Sandiganbayan, in the exercise of its original jurisdiction, imposes the penalty of life imprisonment or reclusion perpetua or where a lesser penalty is imposed involving offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, reclusion perpetua or life imprisonment is imposed, the appeal shall be taken by filing a notice of appeal with the Sandiganbayan and serving a copy thereof to the adverse party.

Under Rule 45 of the Rules of Court, a petition for review on certiorari to this Court (from a Sandiganbayan decision) is proper only where, as provided for in Section 1(a), Rule X of the Revised Internal Rules of the Sandiganbayan, the penalty imposed is less than death, life imprisonment or reclusion perpetua:

(a)

In General. - A party may appeal from a judgment or final order of the Sandiganbayan imposing or affirming a penalty less than death, life imprisonment or reclusion perpetua in criminal cases, and in civil cases, by filing with the Supreme Court a petition for review on certiorari in accordance with Rule 45 of the 1997 Rules of Civil Procedure.

Since Section 1(b), Rule X of the Revised Internal Rules of the Sandiganbayan does not provide for a period to appeal, Section 6, Rule 122 of the Revised Rules of Criminal Procedure shall apply:

Sec. 6. Rule 122. When appeal to be taken. - An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run.

This is so because under Section 2, Rule 1 of the Revised Internal Rules of the Sandiganbayan, the Rules of Court applicable to the Regional Trial Court (RTC) and Court of Appeals (CA) shall, likewise, govern all proceedings in the Sandiganbayan insofar as applicable:

SEC. 2. Coverage. - These Rules shall apply to the internal operations of the Sandiganbayan.

The Rules of Court, resolutions, circulars, and other issuances promulgated by the Supreme Court relating to or affecting the Regional Trial Courts and the Court of Appeals, insofar as applicable, shall govern all actions and proceedings filed with the Sandiganbayan.

Under Section 6, Rule 122 of the Revised Rules of Criminal Procedure, the petitioner had only until September

17, 2003 within which to file his notice of appeal, considering that he received the September 5, 2003 Resolution of the Sandiganbayan on September 16, 2003. However, he filed his notice of appeal only on September 23, 2003, long after the reglementary period. Hence, the Sandiganbayan acted in accord with its Revised Internal Rules and the Rules of Criminal Procedure in denying the petitioner's appeal.

The ruling of this Court in *Formilleza* is not applicable in the case at bar. What was involved in that case was Presidential Decree No. 1606, under which the decisions of the Sandiganbayan may be reviewed on petition for certiorari by this Court:

Presidential Decree No. 1606, as amended, governs the procedure through which cases originating from the Sandiganbayan are elevated to this Court. Under Section 7 thereof, the decisions and final orders of the Sandiganbayan are subject to review on certiorari by the Supreme Court in accordance with Rule 45 of the Rules of Court. This Court has ruled that only questions of law may be raised in a petition for certiorari under Rule 45, subject to certain rare exceptions. Simply stated, one way through which a decision or final order of the Sandiganbayan can be elevated to the Supreme Court is a Petition for certiorari under Rule 45 and, as a general rule, only questions of law may be raised therein. The Solicitor General cites the case of *Peñaverde v. Sandiganbayan* in support of this view.[8]

The petitioner, however, pleads that even if he filed his notice of appeal beyond the period therefor, the Sandiganbayan should have subordinated the rigid application of procedural rules to the attainment of substantial justice; hence, his appeal should have been given due course. After all, he submits, the Court has allowed appeals even if there were delays of four, six and even seven days.[9] The appeal should not be dismissed simply because he followed, in good faith, Section 1(b), Rule X of the Internal Rules of the Sandiganbayan, in relation to Rule 45 of the Rules of Civil Procedure.

The petitioner argues that he was sentenced to suffer three counts of reclusion perpetua; it would be the apex of injustice if he would be deprived of his right to appeal and suffer the penalty, considering that the prosecution failed to prove his guilt beyond reasonable doubt. He pleads for the Court to determine whether his appeal has *prima facie* merit, so as to avoid a travesty of justice.

The petitioner avers that in the face of the records, he is not criminally liable for malversation under Article 217 of the Revised Penal Code because (a) the prosecution failed to prove that, before he was charged with malversation complexed with falsification of commercial documents in the Office of the Ombudsman, the Office of the Provincial Auditor had demanded the refund of the amounts of the three checks; and (b) the Sandiganbayan ignored the cash deposit slips issued by the Land Bank of the Philippines (LBP)[10] showing that he deposited P1,533,050.26 on June 15, 1995 which increased to P2,286,550.26 when he made an additional deposit on June 21, 1995, as stated in his letter to the Provincial Auditor, dated June 21, 1995, which included the total amount of the three checks.[11]

The petitioner further avers that the charges against him were barred by the decision[12] of the Regional Trial Court (RTC) of Iloilo City in Criminal Case No. 48093 promulgated on April 5, 2002, convicting him of malversation of P1,176,580.59; the P893,890.87, which is the total amount of the three checks subject of the cases before the Sandiganbayan, is included in the P1,176,580.59 he had deposited with the LBP. The petitioner appended to his petition a copy of the decision of the RTC.

Elaborating further, the petitioner avers that it was incumbent on the prosecution to prove that he misappropriated, took away or embezzled the P893,890.87 of the municipality for his own personal use and benefit. He asserts that the prosecution failed to prove that he used the said amount for his personal benefit. The petitioner posits that had the prosecution proved that he received a demand to account for or refund the said amounts, the burden could have shifted on him to prove that he did not misappropriate or take away the said amounts for his personal use or

benefit. Indeed, the petitioner notes, Ely Navarro, the leader of the audit team who investigated the matter of the three checks, admitted that the Office of the Provincial Auditor made no such demand. He avers that Navarro even admitted that it was only in the Office of the Ombudsman that such demand was made on him by the team of auditors.

The OSP, on the other hand, avers that the perfection of the appeal in the manner and within the period provided by law is not only mandatory, but is also jurisdictional; since the petitioner failed to appeal within the reglementary period, the decision had become final and executory and can no longer be nullified or reversed. On the substantive issues, the OSP avers that demand is not an essential element of malversation. Moreover, the prosecution adduced evidence that the petitioner consented to the taking of municipal funds. The OSP maintains that the petitioner committed the felony of malversation upon the delivery of the checks to the three payees and their encashment of the said checks, and that the refund of the amounts of the checks is not a ground for his acquittal of the crimes charged. Moreover, the petitioner failed to adduce evidence that the total amount of the three checks was part of the P1,108,741.00 he deposited with the LBP on June 15, 1995. The OSP concludes that the decision of the Sandiganbayan is in accord with the evidence and the law.

On the timeliness of the petitioner's appeal, the Court agrees with the public respondent's contention that, as a rule, the aggrieved party must perfect his appeal within the period as provided for by law. The rule is mandatory in character. A party's failure to comply with the law will result in the decision becoming final and executory, and, as such, can no longer be modified or reversed. Indeed, the rule admits of exceptions, thus:

In the interest of substantial justice, procedural rules of the most mandatory character in terms of compliance, may be relaxed. In other words, if strict adherence to the letter of the law would result in absurdity and manifest injustice or where the merit of a party's cause is apparent and outweighs consideration of non-compliance with certain formal requirements, procedural rules should definitely be liberally construed. A party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on mere technicalities. We, therefore, withhold legal approbation on the RTC decision at bar for its palpable failure to comply with the constitutional and legal mandates thereby denying YAO of his day in court. We also remind all magistrates to heed the demand of Section 14, Article VIII of the Constitution. It is their solemn and paramount duty to uphold the Constitution and the principles enshrined therein, lest they be lost in the nitty-gritty of their everyday judicial work.[13]

Considering that the petitioner was sentenced to suffer three counts of reclusion perpetua, the Court ordered the Sandiganbayan to elevate the records of the cases for the Court to ascertain, based on the records, whether the appeal of the petitioner has prima facie merit, or is only an exercise in futility. After all, the petitioner enumerated in his petition the grounds for his appeal from the decision of the Sandiganbayan, and elaborated his arguments in support thereof; the OSP, likewise, submitted its refutation of the petitioner's submissions.

The Court has meticulously reviewed the records and finds that the petitioner failed to show that his appeal from the decision of the Sandiganbayan is prima facie meritorious.

There is no dispute that State Auditors Helen G. Gamboa and Orlino A. Llauderer conducted an audit of the petitioner's cash and accounts for the period ending June 1, 1995. In the course of the said examination, the petitioner submitted the Cash Production Notice and Cash Account Sheet covering the General and Special Education Trust Funds up to the said date. Based on the submitted cashbook, the auditors discovered that the petitioner had a shortage of P2,264,820.92. The petitioner was notified of the said findings on June 1, 1995.

On June 19, 1995, the auditors wrote the petitioner, demanding that the latter refund the amount of P2,264,820.92 within 72 hours from notice, and submit an explanation why he incurred the shortage. In response to the letter, the petitioner wrote the Provincial Auditor of Iloilo on June 21, 1995, as follows:

June 21, 1995

The Provincial Auditor
Province of Iloilo
Iloilo City

S i r:

In compliance with the Memorandum dated June 19, 1995 of the audit team headed by Mrs. Helen Gamboa, State Auditor II of the Provincial Auditor's Office in Badian, Iloilo hereunder are my justifications/explanation:

- That the amount of P722,809.26 was outright deposited with the Land Bank of the Philippines, Iloilo Branch, on June 5, 1995;
- That there was also a deposit made on June 15, 1995 amounting to P1,108,741.00;
- That another deposit was done on June 21, 1995 amounting to P455,000.00.

In view of the foregoing circumstances, the delay of my deposit was caused to the late posting of all transaction in the cash book. Another factor is that I was not able to reconcile my bank statement against general ledger accounts.

Very truly yours,

(Sgd.)

RENE PONDEVIDA

Municipal Treasurer[14]

On the same day, the State Auditors submitted their report to the Provincial Auditor on their examination of the petitioner's cash and accounts. Acting on the said report, Ely Navarro, then Officer-in-Charge of the Office of the Provincial Auditor, wrote the Regional Director of the Department of Finance on June 22, 1995, recommending the petitioner's relief, and the designation of the Assistant Municipal Treasurer as his temporary replacement. The Regional Director approved the recommendation and relieved the petitioner of his duties as Municipal Treasurer.

On July 18, 1995, the petitioner wrote the Provincial Auditor, stating that he had already deposited the amount of P2,264,820.92 with the LBP, appending thereto the deposit slips for the said amount.

On August 9, 1995, Provincial Auditor Dominador Tersol issued a Memorandum to Auditors Navarro and Llauderer to verify whether the P2,264,820.92 had, indeed, been refunded to the municipality as the petitioner claimed in his Letter of June 21, 1995. They were, likewise, directed -

... to conduct an examination on the cash and accounts of accused Pondevida ... to establish his accountability from 2 June 1995 to 23 June 1995, as a result of his relief as Municipal Treasurer of the said Municipality on June 23, 1995 brought about by his incurrence of a shortage, amounting to P2,264,820.92 as reported by Mrs. Helen Gamboa and Mr. Orlino A. Llauderer in their report dated June 1, 1995.[15]

The auditors were also directed to examine the petitioner's check issuances from June 2, 1995 to June 23, 1995, and to determine whether the said payments were covered by legitimate transactions and supported by proper documentation.

In the meantime, Gamboa and Llauderer submitted their report on their audit examination of the petitioner's cash and accounts, appending thereto the deposit slips referred to in the petitioner's June 21, 1995 letter to the

Provincial Auditor.

In compliance with the Memorandum of the Provincial Auditor, Navarro and Llauderer conducted an examination and verification of the petitioner's claim that he had already refunded the amount of P2,264,820.92. They concluded that the shortage in the petitioner's cash and accounts was only P1,176,580.59. They also examined the check disbursements, and discovered that the petitioner had issued against the municipal funds three checks countersigned by Municipal Mayor Donato Amigable, with the following particulars:

Check No.

Date

Payee

Amount

051750

6/14/95

Roben Mill & Mining
Supply, Iloilo City

P213,700.00

051751

6/14/95

Glenn Celis Construction,
Iloilo City

503,287.89

051752

6/14/95

V.N. Grace Enterprises,
Iloilo City

176,902.78

T o t a l

P893,890.67[16]

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The auditors also noted that the checks were indorsed and encashed with the LBP, Iloilo City Branch Office, under Current Account No. 0032-1094-20 of the Municipality of Badiangan, Iloilo, and that Check Nos. 051751 and 051752 were encashed on June 14, 1995, while Check No. 051750 was encashed on June 15, 1995.[17]

On August 23, 1995, Navarro and Llauderer sent a Memorandum[18] to Mayor Amigable, informing him that such checks were issued without the corresponding disbursement vouchers and supporting documents; and that Glenn Celis, the proprietor of Glenn Celis Construction, executed an affidavit, stating that he has no transaction

with the Municipality of Badiangan, Iloilo, corresponding to the amount of P503,287.89. The mayor was also furnished copies of the three checks. The auditors requested the mayor and the petitioner to comment thereon within five days from notice thereof. However, the auditors did not receive any response from the two.

In a Memorandum[19] to the Provincial Auditor dated November 14, 1995, Navarro and Llauderres made the following recommendations on the petitioner's check disbursements:

For defrauding the government, Rene P. Pondevida, Donato M. Amigable and Olivia K. Grande, shall be jointly and severally held liable for malversation of public funds pursuant to Article 217 of the Revised Penal Code of the Philippines. For having erred through omission which caused them injury to the government, Norma B. Tiu and Glenn Celis may be held liable for the same offense.

The annexes hereto attached shall be considered to form part of this report.[20]

The reports of the auditors were filed with the Ombudsman. After the requisite preliminary investigation, an Information was filed against the petitioner in the RTC of Iloilo City, docketed as Criminal Case No. 48093, for malversation of public funds on the P1,176,580.59 shortage. The inculpatory portion of the Information reads:

That in or about the month of June 1995, and for sometime prior thereto, at the Municipality of Badiangan, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Municipal Treasurer of Badiangan, Iloilo, and, as such, was in possession and custody of public funds in the amount of P9,962,401.68, Philippine currency, for which he is accountable by reason of the duties of his office, in such capacity and committing the offense in relation to office, with deliberate intent, with intent to defraud and of gain, did then and there, willfully, unlawfully and feloniously appropriate, take, misappropriate, embezzle and convert to his own personal use and benefit from the said public funds the amount of One Million One Hundred Seventy-Six Thousand Five Hundred Eighty Pesos and Fifty-Nine Centavos (P1,176,580.59) and despite notice and demands made upon him to account for said public funds, he has failed and up to the present time still fails to do so, to the damage and prejudice of the government in the amount aforestated.[21]

On November 24, 1997, three Informations for malversation of public funds through falsification of commercial documents relating to the checks disbursements were filed in the Sandiganbayan against Mayor Amigable, the petitioner, and three private individuals, namely, Victor Grande, Norma Tiu and Glenn Celis. The cases were docketed as Criminal Case Nos. 24375 to 24377. The inculpatory averments of the Information in Criminal Case No. 24375 read:

That on or about the 14th day of June 1995, or for sometime subsequent thereto, in the Municipality of Badiangan, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, above-named accused DONATO AMIGABLE and RENE PONDEVIDA, public officers, being then the Municipal Mayor and Municipal Treasurer, respectively, of the municipality of Badiangan, Iloilo, in such capacity and committing the offense in relation to office, taking advantage of their official positions, conniving, confederating and mutually helping with each other and with one VICTOR GRANDE, a private individual and proprietor of V.N. Grande Enterprises, Iloilo City, with deliberate intent, with intent to defraud and to falsify, did then and there, falsify a commercial document consisting of a check of LAND BANK OF THE PHILIPPINES, Iloilo City Branch, bearing Serial No. 051752 dated June 14, 1995, in the amount of P176,902.78, Philippine Currency, with V.N. Grande Enterprises as the payee, by making it appear therein that the municipality of Badiangan has some accounts payable to V.N. Grande Enterprises for some purchases made in the total amount of P176,902.78, Philippine Currency, thereby making untruthful statements in a narration of facts, when, in truth and in fact, as accused very well knew that while there were purchases made at V.N. Grande Enterprises; hence, the municipality of Badiangan has some monetary obligation to said establishment, the same amounted only to P63,659.00 and not P176,902.78, and that such scheme was resorted to by herein accused to be able to obtain the amount of P113,243.78, the difference thereof, once the said

documents was falsified, said accused encashed the said LBP check, and with deliberate intent, with intent of gain, did then and there, willfully, unlawfully and feloniously appropriate, misappropriate, take away, embezzle and convert to their own personal use and benefit the amount of P113,243.78, Philippine Currency, and despite notice and demands made upon said accused to account for said public funds, they have failed to do so, to the damage and prejudice of the government.[22]

The material averments of the two other Informations are similarly worded, except for the particulars of the checks and the dates of the alleged commission of the crimes.

On April 5, 2002, the RTC rendered judgment in Criminal Case No. 48093 finding the petitioner guilty of malversation. The dispositive part of the judgment reads:

Based on the foregoing, We hereby decree that the Prosecution established the guilt of the accused Rene P. Pondevida beyond reasonable doubt for violation of Article 217 of the Revised Penal Code.

We hereby order that accused Rene P. Pondevida suffers the penalty of imprisonment ranging from 16 years, 5 months and 11 days to 18 years, 2 months and 20 days of Reclusion Temporal pursuant to Article 217 of the Revised Penal Code in relation to paragraph 1, Article 64, RPC, and in further relation to the Indeterminate Sentence Law (Act No. 4225).

Accused Rene P. Pondevida is ordered to be perpetually disqualified to be employed in the government of the Republic of the Philippines or any of its agencies or instrumentalities for a position that requires handling and/or disposition of public funds pursuant to Article 217 of the Revised Penal Code.

Likewise, pursuant to Article 217 of the Revised Penal Code in relation to the Indeterminate Sentence Law a fine equivalent to one-half of the amount he malversed or P588,190.295 is ordered imposed upon the accused Rene P. Pondevida without subsidiary imprisonment in case of insolvency.

SO ORDERED.[23]

As gleaned from the evidence of the prosecution before the Sandiganbayan, Norma Tiu encashed LBP Check No. 051750 on June 15, 1995, but when she realized that she had no legitimate transaction with the municipality, she turned over P213,700.00 to the petitioner on the said date. Glenn Celis encashed LBP Check No. 051751 on June 14, 1995 but gave the P503,287.89 to the petitioner when the latter demanded that the amount be turned over to him, on his claim that there was "an erroneous application for payment." [24] Victor Grande endorsed LBP Check No. 051752 but his godson, Engr. Jesus Violeta, Jr., returned P115,153.55 to the petitioner on June 14, 1995 and applied the difference of P61,745.78 to the payment of materials supplied to the municipality.[25]

It also appears, based on the evidence of Mayor Amigable, that the petitioner inveigled him into signing the three checks. This can also be gleaned from the petitioner's affidavit:

That I further attest that then Mayor DONATO AMIGABLE is completely innocent of the charges against him considering that the three (3) checks which I asked Ex-Mayor Amigable to sign were intended to pay for the salaries and wages of the employees of the Municipality of Badiangan for the period until June 30, 1995 at which time Ex-Mayor Amigable will step down from office;

As Ex-Mayor Donato Amigable was then winding up his term of office after having served as Mayor for 13½ years, I requested him to sign the three (3) checks now subject matter of this case with my guarantee that the three (3) checks will be used for the salaries and wages of Municipal employees;

That Ex-Mayor Donato Amigable had nothing to do with the transactions I made with the three (3) suppliers and I hereby confirm that Ex-Mayor Amigable has not profited a single centavo from the said three (3) checks or the transactions which arose out of the said checks.

That I hereby further confirm the innocence of Ex-Mayor Donato Amigable to the charges which were filed against him.[26]

Malversation is defined and penalized in Article 217 of the Revised Penal Code, which 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:

- The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed 200 pesos.
- The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.
- The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than 6,000 pesos but is less than 12,000 pesos.
- The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 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 uses.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.

The essential elements common to all acts of malversation under Article 217 of the Revised Penal Code are the following:

(a)

That the offender be a public officer.

(b)

That he had the custody or control of funds or property by reason of the duties of his office.

(c)

That those funds or property were public funds or property for which he was accountable.

(d)

That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

A public officer may be liable for malversation even if he does not use public property or funds under his custody

for his personal benefit, but consents to the taking thereof by another person, or, through abandonment or negligence, permitted such taking.

The prosecution is burdened to prove beyond reasonable doubt, either by direct or circumstantial evidence, that the public officer appropriated, misappropriated or consented or through abandonment or negligence, permitted another person to take public property or public funds under his custody. Absent such evidence, the public officer cannot be held criminally liable for malversation.[27] Mere absence of funds is not sufficient proof of conversion; neither is the mere failure of the public officer to turn over the funds at any given time sufficient to make even the prima facie case. In fine, conversion must be proved.[28] However, 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 account which he is unable to explain.[29]

Demand to produce public funds under a public officer's custody is not an essential element of the felony. The law creates a prima facie presumption of connivance if the public officer fails to produce public funds under his custody upon demand therefor.[30]

However, the presumption may be rebutted by evidence that the public officer had fully accounted for the alleged cash shortage.

In the present case, the petitioner does not dispute the fact that, by his overt acts of drawing and issuing the checks to the order of Victor Grande, Glenn Celis and Norma Tiu, they were able to encash the checks. Even if the petitioner received P893,860.67 from them on June 15, 1997, a day after the checks were encashed, by then, the felonies of malversation had already been consummated. Case law has it that the individuals' taking of funds is completed and is consummated even if the severance of the funds from the possession was only for an instant.[31] Restitution of the said amount after the consummation of the crimes is not a ground for acquittal of the said crimes.

On the petitioner's claim that he deposited the amount of P893,890.67 with the LBP on June 15, 1995 as evidenced by the deposit slips,[32] the Sandiganbayan declared:

Accused Pondevida asserted that he had deposited these amounts in the account of the Municipality of Badiangan with the bank. But this assertion of the accused is without evidentiary support of any kind. No document or paper such as deposit slip or certificate of deposit from the bank has been presented by the accused.[33]

The Sandiganbayan is correct. The petitioner was burdened to prove that the said amount was part of the deposit he made with the LBP on June 15, 1997, but he failed to do so. Indeed, instead of buttressing his petition, the decision of the RTC in Criminal Case No. 48093 militates against his case. It appears that on June 15, 1995, the petitioner deposited P1,108,741.00 in cash.[34] However, there is no indication whatsoever in the deposit slips that the P893,890.67 refunded by Grande, Celis and Tiu on the same day was part of the P1,108,741.00. Moreover, the three checks issued by the petitioner were drawn against Account No. 0032-1094-20, that of the municipality and relating to its general fund. However, of the P1,108,741.00 the petitioner deposited on June 15, 1995, P192,000.00 was deposited in the municipality's general fund, and the rest in the special education fund. This is gleaned from the decision of the RTC in Criminal Case No. 48093, which was, in turn, based on the petitioner's explanation to the finding of Gamboa and Llauderres that the petitioner had a P2,264,820.92 shortage:

Mr. Pondevida submitted an explanation of his shortage together with the deposit slips on the deposit he made with the Land Bank of the Philippines, Iloilo City, totalling P2,288,550.26 itemized as follows:

Date Deposited Fund

LBP Account No.

Amount

6/5/95 General Fund R0032-1094-20

P722,809.26

6/15/95 General Fund 0032-1094-20

192,800.00

6/15/95 SEF 0032-1251-74

176,902.78

6/21/95 SEF 0032-1251-74

455,000.00

6/15/95 Trust Fund 0032-1251-74

685,141.00

Total Deposits

P2,286,550.26[35]

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In fine, it was the petitioner's position in Criminal Case No. 48093 that the total deposit of P2,286,550.26 on June 5, 15 and 21, 1995 with the LBP was to be credited to him, that is, against the P2,264,820.92 shortage on his cash and account. This is also gleaned from the petitioner's letter to the Provincial Auditor dated June 21, 1995, in reply to Gamboa's and Llauderer's Memorandum of June 14, 1995, requiring him to explain the P2,264,820.92 shortage. The petitioner did not claim in the said letter that the said deposit should be credited to his check disbursements of P893,890.67.

Indeed, as of June 15, 1995, the petitioner was not yet subject to audit examination for his check disbursements. It was only on August 23, 1995 that the Provincial Auditor ordered Navarro and Llauderer to conduct an examination of the said check disbursements.

On the petitioner's claim that the charges against him in the court a quo were barred by the RTC decision in Criminal Case No. 48093, the same is belied by no less than the said ruling. The trial court declared that the P1,176,580.59 shortage subject matter of the said case was different from the petitioner's check disbursements subject matter of the cases in the Sandiganbayan:

The evidence further showed that the three Land Bank checks issued by the accused Pondevida to V.N. Grande Enterprises, Iloilo City, Check No. 051752 dated 14 June 1995 P176,902.98, Exhibit "X"; Glen Celis Construction, Iloilo City, Check No. 051751 dated 14 June 1995 P503,287.89, Exhibit "X-1"; Roben Mill and Mining Supply, Check No. 05[1]750 14 June 1995 P213,700.00, were all issued without the prescribed supporting documents. These aforesaid exhibits are now the subject of a criminal case before the Sandiganbayan - Criminal Case No. 243-75-76-77 for Malversation of Public Funds thru Falsification of Commercial Documents captioned People of the Philippines versus Rene P. Pondevida and Donato Amigable pending at the Third Division, Sandiganbayan.[36]

Hence, the judgment of the RTC in Criminal Case No. 48093 is not a bar to the petitioner's prosecution and

conviction in the Sandiganbayan.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The assailed Resolution dated October 3, 2003 and Decision dated April 11, 2003 are AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 103-105.

[2] Rollo, pp. 188-191.

[3] Records, pp. 1267-1270.

[4] Rollo, pp. 11-12.

[5] Id. at 327.

[6] Rollo, p. 274.

[7] No. L-75160, 18 March 1988, 159 SCRA 1.

[8] Formilleza v. Sandiganbayan, supra, p. 7.

[9] Republic of the Philippines v. Court of Appeals, Nos. L-31303-04, 31 May 1978, 83 SCRA 453; Castro v. Court of Appeals, No. L-47410, 29 July 1983, 123 SCRA 782; Cortes v. Court of Appeals, No. L-79010, 23 May 1988, 161 SCRA 444.

[10] Exhibits "6" and "7."

[11] Exhibit "1."

[12] Rollo, pp. 223-236.

[13] Yao v. Court of Appeals, G.R. No. 132428, 24 October 2000, 344 SCRA 202, 221.

[14] Records, p. 747.

[15] Rollo, p. 227.

[16] Records, p. 748.

[17] Records, p. 748.

[18] Id. at 753.

[19] Id. at 748-752.

[20] Id. at 752.

[21] Rollo, p. 162.

[22] Rollo, pp. 65-66.

[23] Rollo, pp. 235-236.

[24] Id. at 84.

[25] Exhibit "8-A."

[26] Records, pp. 549-550.

[27] Madarang v. Sandiganbayan, G.R. No. 112314, 28 March 2001, 355 SCRA 525.

[28] Agullo v. Sandiganbayan, G.R. Nos. 112761-65, 3 February 1997, 361 SCRA 556.

[29] People v. Pepito, G.R. No. 132926, 20 July 2001, 267 SCRA 358.

[30] Madarang v. Sandiganbayan, *supra*.

[31] See People v. Salvilla, G.R. No. 86163, 26 April 1990, 184 SCRA 671.

[32] Exhibit "6."

[33] Rollo, p. 94.

[34] Exhibit "6."

[35] Rollo, p. 232.

[36] Rollo, p. 231.

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