

DINAH C. BARRIGA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (4TH DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NOS. 161784-86. April 26, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for certiorari under Rule 65 of the Rules of Court for the nullification of the Resolution[1] of the Sandiganbayan in Criminal Case Nos. 27435 to 27437 denying the motion to quash the Informations filed by one of the accused, Dinah C. Barriga, and the Resolution denying her motion for reconsideration thereof.

The Antecedents

On April 3, 2003, the Office of the Ombudsman filed a motion with the Sandiganbayan for the admission of the three Amended Informations appended thereto. The first Amended Information docketed as Criminal Case No. 27435, charged petitioner Dinah C. Barriga and Virginio E. Villamor, the Municipal Accountant and the Municipal Mayor, respectively, of Carmen, Cebu, with malversation of funds. The accusatory portion reads:

That in or about January 1996 or sometime prior or subsequent thereto, in the Municipality of Carmen, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, above-named accused VIRGINIO E. VILLAMOR and DINAH C. BARRIGA, both public officers, being then the Municipal Mayor and Municipal Accountant, respectively, of the Municipality of Carmen, Cebu, and as such, had in their possession and custody public funds amounting to TWENTY- THREE THOUSAND FORTY-SEVEN AND 20/100 PESOS (P23,047.20), Philippine Currency, intended for the payment of Five (5) rolls of Polyethylene pipes to be used in the Corte-Cantumog Water System Project of the Municipality of Carmen, Cebu, for which they are accountable by reason of the duties of their office, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously misappropriate, take, embezzle and convert into their own personal use and benefit said amount of P23,047.20, and despite demands made upon them to account for said amount, they have failed to do so, to the damage and prejudice of the government.

CONTRARY TO LAW.[2]

The inculpatory portion of the second Amended Information, docketed as Criminal Case No. 27436, charging the said accused with illegal use of public funds, reads:

That in or about the month of November 1995, or sometime prior or subsequent thereto, in the Municipality of Carmen, Province of Cebu, Philippines, and within the jurisdiction of the Honorable Court, above-named accused VIRGINIO E. VILLAMOR and DINAH C. BARRIGA, both public officers, being then the Municipal Mayor and Municipal Accountant, respectively, of the Municipality of Carmen, Cebu, and as such, had in their possession and control public funds in the amount of ONE THOUSAND THREE HUNDRED FIVE PESOS (P1,305.00) Philippine Currency, representing a portion of the Central Visayas Water and Sanitation Project Trust Fund (CVWSP Fund) intended and appropriated for the projects classified under Level I and III

particularly the construction of Deep Well and Spring Box for Level I projects and construction of water works system for Level III projects of specified barangay beneficiaries/recipients, and for which fund accused are accountable by reason of the duties of their office, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping each other, did then and there, willfully unlawfully and feloniously disburse and use said amount of P1,305.00 for the Spring Box of Barangay Natimao-an, Carmen, Cebu, a barangay which was not included as a recipient of CVWSP Trust Fund, thus, accused used said public fund to a public purpose different from which it was intended or appropriated, to the damage and prejudice of the government, particularly the barangays which were CVWSP Trust Fund beneficiaries.

CONTRARY TO LAW.[3]

The accusatory portion of the third Amended Information, docketed as Criminal Case No. 27437, charged the same accused with illegal use of public funds, as follows:

That in or about the month of January 1997, or sometime prior or subsequent thereto, in the Municipality of Carmen, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused Virginio E. Villamor and Dinah C. Barriga, both public officers, being then the Municipal Mayor and Municipal Accountant, respectively, of the Municipality of Carmen, Cebu, and as such, had in their possession and control public funds in the amount of TWO HUNDRED SIXTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-SEVEN and 96/100 (P267,537.96) PESOS, representing a portion of the Central Visayas Water and Sanitation Project Trust Fund (CVWSP Fund), intended and appropriated for the projects classified under Level I and Level III, particularly the construction of Spring Box and Deep Well for Level I projects and construction of water works system for Level III projects of specified barangay beneficiaries/ recipients, and for which fund accused are accountable by reason for the duties of their office, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously disburse and use said amount of P267,537.96 for the construction and expansion of Barangay Cantucong Water System, a project falling under Level II of CVWSP, thus, accused used said public funds to a public purpose different from which it was intended and appropriated, to the damage and prejudice of the government, particularly the barangay beneficiaries of Levels I and III of CVWSP.

CONTRARY TO LAW.[4]

The Sandiganbayan granted the motion and admitted the Amended Informations. The petitioner filed a Motion to Quash the said Amended Informations on the ground that under Section 4 of Republic Act No. 8294, the Sandiganbayan has no jurisdiction over the crimes charged. She averred that the Amended Informations failed to allege and show the intimate relation between the crimes charged and her official duties as municipal accountant, which are conditions sine qua non for the graft court to acquire jurisdiction over the said offense. She averred that the prosecution and the Commission on Audit admitted, and no less than this Court held in *Tan v. Sandiganbayan*,^[5] that a municipal accountant is not an accountable officer. She alleged that the felonies of malversation and illegal use of public funds, for which she is charged, are not included in Chapter 11, Section 2, Title VII, Book II, of the Revised Penal Code; hence, the Sandiganbayan has no jurisdiction over the said crimes. Moreover, her position as municipal accountant is classified as Salary Grade (SG) 24.

The petitioner also posited that although the Sandiganbayan has jurisdiction over offenses committed by public officials and employees in relation to their office, the mere allegation in the Amended Informations that she committed the offenses charged in relation to her office is not sufficient as the phrase is merely a conclusion of law; controlling are the specific factual allegations in the Informations that would indicate the close intimacy between the discharge of her official duties and the commission of the offenses charged. To bolster her stance, she cited the rulings of this Court in *People v. Montejo*,^[6] *Soller v. Sandiganbayan*,^[7] and *Lacson v. Executive*

Secretary.[8] She further contended that although the Amended Informations alleged that she conspired with her co-accused to commit the crimes charged, they failed to allege and show her exact participation in the conspiracy and how she committed the crimes charged. She also pointed out that the funds subject of the said Amended Informations were not under her control or administration.

On October 9, 2003, the Sandiganbayan issued a Resolution[9] denying the motion of the petitioner. The motion for reconsideration thereof was, likewise, denied, with the graft court holding that the applicable ruling of this Court was *Montilla v. Hilario*,[10] i.e., that an offense is committed in relation to public office when there is a direct, not merely accidental, relation between the crime charged and the office of the accused such that, in a legal sense, the offense would not exist without the office; in other words, the office must be a constituent element of the crime as defined in the statute. The graft court further held that the offices of the municipal mayor and the municipal accountant were constituent elements of the felonies of malversation and illegal use of public funds. The graft court emphasized that the rulings of this Court in *People v. Montejo*[11] and *Lacson v. Executive Secretary*[12] apply only where the office held by the accused is not a constituent element of the crimes charged. In such cases, the Information must contain specific factual allegations showing that the commission of the crimes charged is intimately connected with or related to the performance of the accused public officer's public functions. In fine, the graft court opined, the basic rule is that enunciated by this Court in *Montilla v. Hilario*, and the ruling of this Court in *People v. Montejo* is the exception.

The petitioner thus filed the instant petition for certiorari under Rule 65 of the Rules of Court, seeking to nullify the aforementioned Resolutions of the Sandiganbayan. The petitioner claims that the graft court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the same.

In its comment on the petition, the Office of the Special Prosecutor averred that the remedy of filing a petition for certiorari, from a denial of a motion to quash amended information, is improper. It posits that any error committed by the Sandiganbayan in denying the petitioner's motion to quash is merely an error of judgment and not of jurisdiction. It asserts that as ruled by the Sandiganbayan, what applies is the ruling of this Court in *Montilla v. Hilario* and not *People v. Montejo*. Furthermore, the crimes of malversation and illegal use of public funds are classified as crimes committed by public officers in relation to their office, which by their nature fall within the jurisdiction of the Sandiganbayan. It insists that there is no more need for the Amended Informations to specifically allege intimacy between the crimes charged and the office of the accused since the said crimes can only be committed by public officers. It further claims that the petitioner has been charged of malversation and illegal use of public funds in conspiracy with Municipal Mayor Virginio E. Villamor, who occupies a position classified as SG 27; and even if the petitioner's position as municipal accountant is only classified as SG 24, under Section 4 of Rep. Act No. 8249, the Sandiganbayan still has jurisdiction over the said crimes. The Office of the Special Prosecutor further avers that the petitioner's claim, that she is not an accountable officer, is a matter of defense.

The Ruling of the Court

The petition has no merit.

We agree with the ruling of the Sandiganbayan that based on the allegations of the Amended Informations and Rep. Act No. 8249, it has original jurisdiction over the crimes of malversation and illegal use of public funds charged in the Amended Informations subject of this petition.

Rep. Act No. 8249,[13] which amended Section 4 of Presidential Decree No. 1606, provides, inter alia, that the Sandiganbayan has original jurisdiction over crimes and felonies committed by public officers and employees, at least one of whom belongs to any of the five categories thereunder enumerated at the time of the commission of

such crimes.[14] There are two classes of public office-related crimes under subparagraph (b) of Section 4 of Rep. Act No. 8249: first, those crimes or felonies in which the public office is a constituent element as defined by statute and the relation between the crime and the offense is such that, in a legal sense, the offense committed cannot exist without the office;[15] second, such offenses or felonies which are intimately connected with the public office and are perpetrated by the public officer or employee while in the performance of his official functions, through improper or irregular conduct.[16]

The Sandiganbayan has original jurisdiction over criminal cases involving crimes and felonies under the first classification. Considering that the public office of the accused is by statute a constituent element of the crime charged, there is no need for the Prosecutor to state in the Information specific factual allegations of the intimacy between the office and the crime charged, or that the accused committed the crime in the performance of his duties. However, the Sandiganbayan likewise has original jurisdiction over criminal cases involving crimes or felonies committed by the public officers and employees enumerated in Section (a) (1) to (5) under the second classification if the Information contains specific factual allegations showing the intimate connection between the offense charged and the public office of the accused, and the discharge of his official duties or functions - whether improper or irregular.[17] The requirement is not complied with if the Information merely alleges that the accused committed the crime charged in relation to his office because such allegation is merely a conclusion of law.[18]

Two of the felonies that belong to the first classification are malversation defined and penalized by Article 217 of the Revised Penal Code, and the illegal use of public funds or property defined and penalized by Article 220 of the same Code. The public office of the accused is a constituent element in both felonies.

For the accused to be guilty of malversation, the prosecution must prove the following essential elements:

- (a) The offender is a public officer;
- (b) He has the custody or control of funds or property by reason of the duties of his office;
- (c) The funds or property involved are public funds or property for which he is accountable; and
- (d) He has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.[19]

For the accused to be guilty of illegal use of public funds or property, the prosecution is burdened to prove the following elements:

- (1) The offenders are accountable officers in both crimes.
- (2) The offender in illegal use of public funds or property does not derive any personal gain or profit; in malversation, the offender in certain cases profits from the proceeds of the crime.
- (3) In illegal use, the public fund or property is applied to another public use; in malversation, the public fund or property is applied to the personal use and benefit of the offender or of another person.[20]

We agree with the ruling of the Sandiganbayan that the public office of the accused Municipal Mayor Virginio E. Villamor is a constituent element of malversation and illegal use of public funds or property. Accused mayor's position is classified as SG 27. Since the Amended Informations alleged that the petitioner conspired with her co-accused, the municipal mayor, in committing the said felonies, the fact that her position as municipal accountant is classified as SG 24 and as such is not an accountable officer is of no moment; the Sandiganbayan still has exclusive original jurisdiction over the cases lodged against her. It must be stressed that a public officer who is not in charge of public funds or property by virtue of her official position, or even a private individual, may be liable for malversation or illegal use of public funds or property if such public officer or private individual

conspires with an accountable public officer to commit malversation or illegal use of public funds or property.

In *United States v. Ponte*,^[21] the Court, citing *Viada*, had the occasion to state:

Shall the person who participates or intervenes as co-perpetrator, accomplice or abettor in the crime of malversation of public funds, committed by a public officer, have the penalties of this article also imposed upon him? In opposition to the opinion maintained by some jurists and commentators (among others the learned Pacheco) we can only answer the question affirmatively, for the same reasons (*mutatis mutandis*) we have already advanced in Question I of the commentary on article 314. French jurisprudence has also settled the question in the same way on the ground that the person guilty of the crime necessarily aids the other culprit in the acts which constitute the crime.” (Vol. 2, 4th edition, p. 653) The reasoning by which *Groizard* and *Viada* support their views as to the correct interpretation of the provisions of the Penal Code touching malversation of public funds by a public official, is equally applicable in our opinion, to the provisions of Act No. 1740 defining and penalizing that crime, and we have heretofore, in the case of the *United States vs. Dowdell* (11 Phil. Rep., 4), imposed the penalty prescribed by this section of the code upon a public official who took part with another in the malversation of public funds, although it was not alleged, and in fact clearly appeared, that those funds were not in his hands by virtue of his office, though it did appear that they were in the hands of his co-principal by virtue of the public office held by him.^[22]

The Court has also ruled that one who conspires with the provincial treasurer in committing six counts of malversation is also a co-principal in committing those offenses, and that a private person conspiring with an accountable public officer in committing malversation is also guilty of malversation.^[23]

We reiterate that the classification of the petitioner’s position as SG 24 is of no moment. The determinative fact is that the position of her co-accused, the municipal mayor, is classified as SG 27, and under the last paragraph of Section 2 of Rep. Act No. 7975, if the position of one of the principal accused is classified as SG 27, the Sandiganbayan has original and exclusive jurisdiction over the offense.

We agree with the petitioner’s contention that under Section 474 of the Local Government Code, she is not obliged to receive public money or property, nor is she obligated to account for the same; hence, she is not an accountable officer within the context of Article 217 of the Revised Penal Code. Indeed, under the said article, an accountable public officer is one who has actual control of public funds or property by reason of the duties of his office. Even then, it cannot thereby be necessarily concluded that a municipal accountant can never be convicted for malversation under the Revised Penal Code. The name or relative importance of the office or employment is not the controlling factor.^[24] The nature of the duties of the public officer or employee, the fact that as part of his duties he received public money for which he is bound to account and failed to account for it, is the factor which determines whether or not malversation is committed by the accused public officer or employee. Hence, a mere clerk in the provincial or municipal government may be held guilty of malversation if he or she is entrusted with public funds and misappropriates the same.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

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

[1] Penned by Associate Justice Gregory S. Ong, with Associate Justices Rodolfo G. Palattao (retired) and Norberto Y. Germaldez, concurring.

[2] Rollo, pp. 48-49.

[3] Id. at 51-52.

[4] Id. at 54-55.

[5] G.R. Nos. 88475-96, 5 August 1993, 225 SCRA 156.

[6] 108 Phil. 613 (1960).

[7] G.R. Nos. 144261-62, 9 May 2001, 357 SCRA 677.

[8] G.R. No. 128096, 20 January 1999, 301 SCRA 298.

[9] Rollo, pp. 33-40.

[10] 90 Phil. 49 (1951).

[11] Supra.

[12] Supra.

[13] Jurisdiction.— The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Official of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade “27” and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and official and prosecutors in the Office of the Ombudsman and special prosecutor; and

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade “2” and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade “27” and higher under the Compensation and Position Classification Act of 1989.

...

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In cases where none of the accused are occupying positions corresponding to Salary Grade “27” or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

[14] *Inding v. Sandiganbayan*, G.R. No. 143047, 14 July 2004, 434 SCRA 388.

[15] *Montilla v. Hilario*, *supra*.

[16] *People v. Montejo*, *supra*.

[17] *Ibid*.

[18] *Lacson v. Executive Secretary*, *supra*.

[19] *Sarigumba v. Sandiganbayan*, G.R. No. 154239-41, 16 February 2005.

[20] Reyes, *The Revised Penal Code*, Book II, 13th ed., p. 378.

[21] 20 Phil. 379 (1911).

[22] *Id.* at 384-385.

[23] *People v. Sendaydiego*, G.R. Nos. L-33252 to L-33254, 20 January 1978; 81 SCRA 120.

[24] *Quiñon v. People*, G.R. No. 136462, 19 September 2002; 389 SCRA 412.

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