

MUNIB S. ESTINO AND ERNESTO G. PESCADERA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. Nos. 163957-58. April 07, 2009*

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-163957-58/>**VELASCO JR., J.:**

For review before the Court under Rule 45 are the April 16, 2004 Decision[1] and June 14, 2004 Resolution[2] of the Sandiganbayan in the consolidated Criminal Case Nos. 26192 and 26193 entitled *People of the Philippines v. Munib S. Estino and Ernesto G. Pescadera*. In G.R. Nos. 163957-58, petitioners Munib S. Estino and Ernesto G. Pescadera appeal their conviction of violation of Section 3(e), Republic Act No. (RA) 3019 or the Anti-Graft and Corrupt Practices Act for failure to pay the Representation and Transportation Allowance (RATA) of the provincial government employees of Sulu. In G.R. Nos. 164009-11, petitioner Pescadera alone appeals his conviction of malversation of public funds under Article 217 of the Revised Penal Code for failure to remit the Government Service Insurance System (GSIS) contributions of the provincial government employees amounting to PhP 4,820,365.30. In these consolidated appeals, petitioners pray for their acquittal.

The Facts

Estino was elected Vice-Governor of Sulu in the May 1998 elections along with Gov. Abdusakur Tan. On June 23, 1998, this Court issued a status quo order in G.R. No. 133676, suspending the effects of the proclamation of Gov. Tan and ordering Vice-Gov. Estino to assume the position of Governor until further orders. Thus, Estino acted as Governor of Sulu from July 27, 1998 up to May 23, 1999 when this Court lifted the suspension order against Gov. Tan. Ernesto G. Pescadera, on the other hand, was Provincial Treasurer of Sulu during Estino's stint as Acting Governor.[3]

Pursuant to Commission on Audit (COA)-ARMM Office Order No. 99-165 dated August 26, 1999, a special audit team was created upon the request of the Provincial Government of Sulu. An audit of the disbursement vouchers and payrolls for the period starting July 27, 1998 up to May 23, 1999 was then conducted by COA State Auditor II Mona U. Balabaran and her team. The COA Special Audit Report stated that there were anomalies in the payment of salary differentials, allowances, and benefits, among others. The Ombudsman then filed three informations against petitioners, as follows:

CRIMINAL CASE NO. 26192

That sometime in or about January to May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice-Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then willfully, unlawfully and feloniously, cause undue injury to the employees of the Provincial Government of Sulu through evident bad faith by failing to pay them their salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and Representation Allowance (PERA), Representation and Travel Allowance (RATA), Mid-year Bonus, Cash Gift and Clothing

Allowance in the total amount of P8,435,625.34.

CONTRARY TO LAW.

CRIMINAL CASE NO. 26193

That sometime in or about July 1998 to May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, take, convert and misappropriate the GSIS monthly contributions and loan amortizations collected from the provincial employees in the amount of P4,820,365.30 for their own personal benefit or advantage to the damage and prejudice of the said employees and the government as well.

CONTRARY TO LAW.

CRIMINAL CASE NO. 26194

That sometime in or about May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, cause undue injury to the government through evident bad faith by withdrawing from Philippine National Bank-Jolo Branch the amount of P21.5 million on 07 May 1999 out of the Internal Revenue Allotment of P28,268,578.00 which was deposited to the account of Sulu Provincial Government on the same day and using the said amount to pay "various expenses" without, however, specifying what the expenses are in violation of existing government accounting rules.

CONTRARY TO LAW. [4]

Petitioners pleaded not guilty to the offenses charged in the informations.

Criminal Case No. 26192

During trial in the Sandiganbayan, Balabaran testified that based on the disbursement vouchers and payrolls she and her team examined for the period January to May 1999, the Provincial Government of Sulu failed to pay the provincial government employees their salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and Representation Allowance (PERA), and other benefits; that the Department of Budget and Management confirmed to the special audit team that funds were released to the Provincial Government of Sulu for January to May 1999 so there was no reason why the money was not released to the employees; and that the funds released came from the internal revenue allotment (IRA) of the provincial government for the 1999 budget. The prosecution submitted that this failure violated Sec. 3(e) of RA 3019 which provides:

Section 3. Corrupt practices of public officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or

permits or other concessions.

In his defense, Estino testified that when he assumed office as Acting Governor of Sulu, he called for a general meeting of all the heads of departments, as well as officials and employees to inform them that the remaining money of the provincial government was PhP 47 only. He further informed them of the pending amortization for the loan from the Philippine National Bank (PNB) payable from April to June 1998, and suggested that the salary differentials of all the government employees be paid first while the GSIS remittance be deferred since the pending IRA for the provincial government was not yet released. As to the ACA, PERA, and clothing allowance, he said that these were not paid because the budget for 1999 was not yet approved and there was no provision for those items in the 1998 budget. The budget for 1999 was approved only on June 17, 1999 when Estino was no longer the Acting Governor. The RATA, on the other hand, was provided for in the 1998 budget; hence, the 1998 budget was used in paying the RATA.[5]

Pescadera testified that the employees' benefits were not paid because the 1999 budget was not yet approved then. Also, he said that there was no appropriation for ACA and PERA in the 1998 budget; that the RATA for 1999 was paid; that the cash gift, mid-year bonus, and clothing allowance for the period January to May 1999 were not paid as these were supposed to be paid in December 1999; and that he was the Provincial Treasurer of Sulu up to May 1999 only.[6]

The Sandiganbayan found petitioners not guilty with regard to the charge of nonpayment of PERA, ACA, cash gift, mid-year bonus, and clothing allowance. The court found that the Provincial Government of Sulu did operate under the 1998 reenacted budget which had no appropriation for PERA and ACA. Petitioners were not held liable for nonpayment of the Year-End Bonus and Cash Gift because these may be given from May 1 to May 31 of each year, while Estino held office as Acting Governor until May 23, 1999 and Pescadera was the Provincial Treasurer until May 1999. As to the clothing allowance, no evidence was presented as to when it should be given to the employees. Payment for the salary differentials for January to May 1999 could not also be done since the 1999 budget was not yet approved.[7]

As regards the RATA, the Sandiganbayan held that petitioners' defense of payment was an affirmative allegation that required proof. The court stated:

x x x [N]o convincing evidence was presented by the defense to support their claim that they paid the same. Although accused Pescadera testified that Exhibits "3-O" to "3-T", "3-W", "3-X", "3-HH" and "3-II" were vouchers showing payment of RATA for the month of May 1999 for various officers of the Provincial Government of Sulu, the same were not signed by the claimants thereof.

There is budget for the payment of RATA. The IRA pertaining to the province was regularly released. The non-payment thereof constitutes a conscious and deliberate intent to perpetrate an injustice to the officials of the Provincial Government of Sulu. Evident bad faith therefore exists.

x x x x

In the instant case, failure to pay the RATA constitutes an inaction which caused actual damage to the officials entitled thereto, the amount of which was equivalent to the actual amount of the RATA that was due them for the period January to May 1999.

The information alleged that the two accused committed this offense by conspiring and confederating with each other. In conspiracy, it is essential that there must be unity of purpose and unity in the execution of the unlawful objective. These were present in the instant case. Both accused knew that they failed to pay the RATA to the officers entitled thereto.[8]

The aforesaid judgment is the subject of the appeal docketed as G.R. Nos. 163957-58.

Criminal Case No. 26193

Auditor Balabaran testified that the GSIS premiums for the government and personal share of officials and employees of the Provincial Government of Sulu were deducted from their salaries, but upon confirmation with the Branch Manager of the GSIS in Jolo, the audit team learned that the GSIS premiums were not remitted. According to Estino, however, the audit reports showed that he and Pescadera did not malverse the funds of the Provincial Government. In addition, Pescadera testified that when Estino assumed office as Acting Governor, the Provincial Government of Sulu was already indebted to the GSIS for its failure to remit the said GSIS monthly remittances which amounted to PhP 4 million. Pescadera stated that Estino called a general assembly of all the officers and employees of the provincial government to discuss the cash operation of Sulu. In that meeting, the officers and employees decided to prioritize the payment of the salary differentials first, followed by the loan amortization to the PNB, and lastly, the GSIS remittances. Pescadera added that the provincial government intended to pay or remit the accrued GSIS monthly remittances as soon as the cash position of the province improves and the 10% of the IRA is released.[9]

Before the Sandiganbayan, the prosecution charged petitioners with malversation of public funds under Art. 217 of the Revised Penal Code. The Sandiganbayan consequently exonerated Estino but convicted Pescadera. The court held:

In the case at bar, there was evidence that GSIS contributions for the period July 1998 to May 1999 consisting of employee share and loan amortizations were deducted from the salaries of the employees of the province. The 1998 reenacted budget provided for GSIS Premiums (Government Share) and the IRA for the province was regularly released by the DBM. These GSIS contributions were not remitted. In fact contrary to accused Estino's claim, Provincial Auditor Nora A. Imlan stated in her 1998 and 1999 Annual Audit Report that the Province of Sulu had unremitted GSIS contributions for CY 1998 and 1999.

Accused Pescadera, being then the Provincial Treasurer, was the public officer charged with the disbursement of GSIS funds for remittance to the GSIS. He failed to disburse and to remit it to the GSIS at the time it became due. He failed to account for it upon demand by Provincial Auditor Nora A. Imlan and by the Special Audit Team. It is now incumbent upon the accused to rebut the presumption of conversion.

x x x x

However, no evidence was presented to support the claim that the employees agreed to prioritize the payment of PNB loan amortization. Even if there were such an agreement, it would still be contrary to Section 6(b) of the Government Service Insurance System Act of 1997 (R.A. 8291) which provides:

Each employer shall remit directly to the GSIS the employees' and employers' contributions within the first ten (10) days of the calendar month to which the contributions apply. The remittance by the employer of the contributions to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees.

Insufficiency of funds of the province is not a valid defense. The fact remained that the GSIS contributions consisting of employee share and loan amortizations were deducted from the salaries of the employees.

While it was true that the budget for 1999 was approved only on June 2, 1999, it was also true that on January to May 1999, the province of Sulu operated under the 1998 reenacted budget. Further, the reenacted budget provided for GSIS Premiums (Government Share). The DBM letter dated October 28, 1999 (Exhibit "A-39") and Summary of Releases of IRA for July 1998 to May 1999 (Exhibit "A-40") clearly showed that the IRA pertaining to the province was regularly released.

Moreover, prosecution witness Mona Balabaran correctly testified that the Trial Balance, Journal of Checks Issued and Report of Checks Issued showed only the sum total of all the money transactions of the Province of Sulu. These reports did not contain the cash status vis-à-vis the mandatory obligations and the details on where the fund of the province was spent. Clearly, accused Pescadera was not able to rebut the presumption of conversion.[10]

With respect to Estino, however, the Sandiganbayan did not find any conspiracy with Pescadera. The court held that it was Pescadera's duty as the Provincial Treasurer to advise Estino, then Acting Governor, and other local government officials regarding the disposition of local government funds and other matters related to public finance. It was found that Pescadera failed to inform Estino that the GSIS contributions must be remitted directly to the GSIS within the first 10 days of the calendar month following the month to which the contributions apply.[11] Also, the Sandiganbayan explained that even if Estino was Pescadera's co-signatory in the checks, mere signature or approval is not enough to sustain a finding of conspiracy, based on *Sabiniano v. Court of Appeals*. [12]

Pescadera's appeal of his conviction is the subject of G.R. Nos. 164009-11.

Criminal Case No. 26194

Anent the last charge, Balabaran testified that internal control was violated when petitioners signed the vouchers without the signature of Provincial Accountant Nestor Lozano. As a result, the transactions were not recorded in the book of accounts. She further stated that the amount of cash in the trial balance was overstated. The audit team did not examine the monthly trial balance, the journal and analysis of obligations, the journal of checks issued, the report of checks issued, and the journal of cash disbursement because all these documents merely contained the sum total, whereas the disbursement vouchers and payrolls stated the particular transactions that transpired which could help them discover any anomaly.[13]

Petitioners were charged with violation of RA 3019, Sec. 3(e). In his defense, Estino testified that the disbursement vouchers for the PhP 21.5 million cash advances he approved were supported with documents; that the 5% of the 10% retention of the IRA of the national government was paid only in May 2002; and that he was authorized by the Provincial Board to withdraw PhP 21.5 million on May 7, 1999. Pescadera, on the other hand, testified that the cash advances amounting to PhP 21.5 million from the PNB was accompanied by vouchers and supporting documents; that the said amount was used in paying specific obligations of the Provincial Government of Sulu; that the signature of the provincial accountant did not appear on the cash advances and vouchers because during the withdrawal of the amounts, the provincial accountant was out of town; and that the provincial auditor of Sulu allowed said cash advances.[14]

RA 3019, Sec. 3(e) has three elements: (1) the accused is a public officer discharging administrative, judicial, or official functions; (2) the accused must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and (3) the accused's action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.

The Sandiganbayan found only the first two elements in this case. First, petitioners were public officers at the time in question. Second, bad faith was evident in petitioners' act of withdrawing amounts without the signature of the provincial accountant. This violated Sec. 344 of the Local Government Code and Secs. 157 and 168 of the Government Accounting and Auditing Manual. Nevertheless, the government did not suffer actual damages from the withdrawal of PhP 21.5 million. While said cash advances did not specify the particulars of payment, the documentary exhibits attached to the cash advances, i.e., disbursement vouchers, Request for Obligation of Allotment, Summary of Payrolls, Time Book, and Payrolls, sufficiently itemized the obligations to be paid by the

cash advances. Since the prosecution failed to prove any damage or injury to the Provincial Government of Sulu, petitioners were acquitted of the crime charged.[15]

The Ruling of the Sandiganbayan

The dispositive portion of the Sandiganbayan's April 16, 2004 judgment reads:

WHEREFORE:

I. In Criminal Case No. 26192, the Court finds accused MUNIB S. ESTINO and ERNESTO G. PESCADERA, both GUILTY, beyond reasonable doubt, for violation of Sec. 3(e) of R.A. 3019, and pursuant to Section 9 thereof, and are hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, six (6) years and one (1) month as minimum, up to fifteen (15) years, as maximum; and,

(B) Perpetual Disqualification from Public Office.

II. In Criminal Case No. 26193, this Court finds accused ERNESTO G. PESCADERA, GUILTY, beyond reasonable doubt, of the crime of malversation of public funds, and is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, twelve (12) years, five (5) months and eleven (11) days of reclusion temporal, as minimum, up to twenty years (20) years of reclusion perpetua, as maximum;

(B) Perpetual Special Disqualification;

(C) Fine of FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND THREE HUNDRED SIXTY-FIVE PESOS AND THIRTY CENTAVOS (Php4,820,365.30), with subsidiary imprisonment in case of insolvency;

(D) All the accessory penalties provided for under the law; and,

(E) To pay the cost of the suit.

Accused PESCADERA is likewise ordered to restitute the amount of FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND THREE HUNDRED SIXTY-FIVE PESOS AND THIRTY CENTAVOS (Php4,820,365.30) to the Provincial Government of Sulu.

With respect to MUNIB S. ESTINO, for failure of the Prosecution to prove his [guilt] beyond reasonable doubt, he is hereby ordered ACQUITTED of the crime of malversation of public funds.

III. In Criminal Case No. 26194, for failure of the Prosecution to prove the guilt of accused MUNIB S. ESTINO and ERNESTO G. PESCADERA beyond reasonable doubt, both accused are hereby ordered ACQUITTED.[16]

Petitioners filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration and New Trial which were denied in the June 14, 2004 Sandiganbayan Resolution. Thus, they filed these petitions.

The Issues

WHETHER OR NOT PETITIONERS FAILED TO PAY THE RATA AND ARE THUS GUILTY OF VIOLATING SEC. 3(e) OF RA 3019

WHETHER OR NOT PETITIONER PESCADERA IS GUILTY OF MALVERSATION OF PUBLIC FUNDS FOR FAILURE TO REMIT THE GSIS CONTRIBUTIONS

The Court's Ruling

G.R. Nos. 163957-58

Petitioners Estino and Pescadera point out that the basis of the information for Criminal Case No. 26192 was the COA Report, which reads:

2. On the allegation that no payments were intended for the salary differentials, ACA, PERA and other benefits of employees of the Provincial Government of Sulu for the period covered from January, 1999 to May, 1999

It was noted that no benefits were paid to the employees of Sulu Provincial Office for the period covered from January, 1999 to May, 1999 based on the submitted paid disbursement vouchers (Annex E).

For the month of May 1999, the Provincial Government of Sulu received a total allotment of P28,268,587.00, which includes January, 1999 to April, 1999 releases for IRA differentials (See Annex B). The amount intended for the said benefits were disbursed other than specific purpose for which these are appropriated (Annex C).[17]

Petitioners note that the COA Report does not state that they did not pay the RATA under the reenacted budget of 1998. The prosecution witness, Auditor Balabaran, testified that the COA Report pertains to the nonpayment of ACA, PERA, and other benefits provided for in the 1999 budget. The 1999 budget, however, was not approved during the incumbency of Estino as Acting Governor. In the cross-examination of Balabaran, she testified as follows:

CROSS-EXAMINATION:

(Atty. Quadra)

Q. I show to you, Madam Witness, your Audit Report dated January 12, 2000, and I call your attention on the finding in page 5 thereof which reads: "On the allegation that no payments were made intended for the salary [differentials], ACA, PERA, and other benefits of the employees of the Provincial Government of Sulu for the period covered from January 1999 to May 1999." Now, it is stated here that no payments of the said benefits of the employees were made from January 1999 to May 1999. My question is, when you said benefits of the employees you are referring to the benefits of the employees provided for in the 1999 Budget? Please go over this Report.

(Witness looking at the document)

A. You want me to explain?

AJ Palattao: What benefit are you referring?

A. We are referring to the benefits that was to be paid, your Honor, the ACA, the PERA, and the other benefits.

Q Yes, and those benefits that you are referring to are the benefits provided for in the Annual Budget for the Year 1999?

AJ Palattao: Are you referring to a benefit granted to the employees under the 1999 Annual Budget? Yes or no?

A. The benefits that are intended to the employees for the year 1999.

Q. 1999. You are not referring to the benefits of the employees provided for in the 1998 budget?

A. Yes, it is very clear, January 1999 to May 1999.

Q. It is only in 1999?

A. Yes, Sir. [TSN, p. 5 December 6, 2000][18]

Petitioners insist that there is enough evidence to show that the RATA provided for in the 1998 reenacted budget was paid for the period January to May 1999. In their Supplemental Motion for Reconsideration and Motion for New Trial, petitioners presented to the Sandiganbayan a Certification dated May 11, 2002 issued by the Provincial Auditor Abdurasad J. Undain, stating that the RATA for the period January to May 1999 was paid to the officials entitled to it and that the GSIS premiums pertaining to prior years were also settled by the Provincial Government of Sulu. In support of this certification, petitioners submitted sworn statements of the provincial officials entitled to RATA, stating that they were paid such allowance from January to May 1999 and that they did not have any complaint to its alleged nonpayment.[19] They also submitted 99 certified true copies of the Disbursement Vouchers showing the payment of the RATA from January to May 1999 provided for in the 1998 reenacted budget. Petitioners presented these vouchers only in their Supplemental Motion for Reconsideration and/or Motion for New Trial allegedly because they thought that the COA Report pertained only to the benefits provided in and to be paid with the 1999 budget. They may have been misled when Auditor Balabaran did not testify on the alleged nonpayment of the RATA for January to May 1999 with the reenacted budget of 1998.

Anent the Sandiganbayan's finding that the vouchers showing payment of RATA for May 1999 were not signed by the claimants, petitioners explain that the actual release of RATA is the responsibility of the cashier of the province. Petitioners claim that they could not be faulted for the failure of the cashier to require the claimants to sign the receipt of payment. Furthermore, the claimants in Exhibits "3-O" to "3-T," "3-W," "3-X," "3-HH," and "3-II" all executed sworn statements that they received their RATA.

Petitioners further point out that the Sandiganbayan justices who heard and tried their case were not the ones who rendered the questioned decision. The trial was conducted by Justices Narciso S. Nario, Rodolfo G. Palatiao, and Nicodemo T. Ferrer, while the decision was rendered by Justices Gregory T. Ong, Norberto Y. Geraldez, and Efren N. dela Cruz.

On the other hand, the Office of the Special Prosecutor asserts that the petition should be dismissed because it raises questions of fact not proper in an appeal by certiorari. It also asserts the following: Even if the petition is given due course, there are factual and legal bases for the conviction. Although the term "RATA" was not mentioned in the COA Report, said allowance was contemplated by the auditors in their use of the term "benefits." Also, the sworn statements of the officials on their receipt of the RATA and the certification of the Provincial Auditor to the effect that the RATA has been paid are belated and unsubstantiated. These were submitted only in petitioners' Supplemental Motion for Reconsideration, thus implying that payments of the RATA were made after the conviction of petitioners. Likewise, the unsigned disbursement vouchers deserve no merit because of the irregularities in these documents. Some do not bear the dorsal portion of the vouchers or the signature of the Provincial Auditor, while others were signed by persons other than the claimants without any proof of their authority from the principals. The vouchers also show that the RATA was paid in cash instead of through checks in violation of Presidential Decree No. 1445.

The Case Should be Remanded to the Sandiganbayan

Petitioners' defense is anchored on their payment of RATA, and for this purpose, they submitted documents which allegedly show that they paid the RATA under the 1998 reenacted budget. They also claim that the COA Report did not sufficiently prove that they did not pay the RATA because the alleged disbursement vouchers, which were supposed to be annexed to the COA Report as proof of nonpayment of RATA, were not submitted with said report.

We resolve to grant petitioners a chance to prove their innocence by remanding the case to the Sandiganbayan for a new trial of Criminal Case No. 26192. Rule 121 of the Rules of Court allows the conduct of a new trial before a judgment of conviction becomes final when new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.[20] Although the documents offered by petitioners are strictly not newly discovered, it appears to us that petitioners were mistaken in their belief that its production during trial was unnecessary. In their Supplemental Motion and/or Motion for New Trial, they stressed that they no longer presented the evidence of payment of RATA because Balabaran testified that the subject of the charge was the nonpayment of benefits under the 1999 budget, without mention of the RATA nor the 1998 reenacted budget. It seems that they were misled during trial. They were precluded from presenting pieces of evidence that may prove actual payment of the RATA under the 1998 reenacted budget because the prosecution's evidence was confined to alleged nonpayment of RATA under the 1999 budget.

In this instance, we are inclined to give a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges against petitioners. The situation of the petitioners is peculiar, since they were precluded from presenting exculpatory evidence during trial upon the honest belief that they were being tried for nonpayment of RATA under the 1999 budget. This belief was based on no less than the testimony of the prosecution's lone witness, COA Auditor Mona Balabaran. Even Associate Justice Palattao of the Sandiganbayan had to clarify from Balabaran which budget she was referring to. Balabaran, however, made it very clear that the unpaid benefits were those provided under the 1999 budget, to wit:

AJ Palattao: Are you referring to a benefit granted to the employees under the 1999 Annual Budget? Yes or no?

A. The benefits that are intended to the employees for the year 1999.

Q. 1999. You are not referring to the benefits of the employees provided for in the 1998 budget?

A. Yes, it is very clear, January 1999 to May 1999.

Q. It is only in 1999?

A. Yes, Sir. [TSN, p. 5 December 6, 2000][21] (Emphasis supplied.)

From the foregoing discourse, it is understandable how petitioners could have thought that they need not present any more evidence to prove payment of the RATA under the 1998 budget. Apparently, the COA Auditor who prepared the report and testified on it established that the trial was about nonpayment of benefits under the 1999 budget. That budget was not approved during petitioners' stint in Sulu. Faced with conviction, nevertheless, they deserve a chance to prove their innocence. This opportunity must be made available to the accused in every possible way in the interest of justice. Hence, petitioners should be allowed to prove the authenticity of the vouchers they submitted and other documents that may absolve them. A remand of the case for a new trial is in order. This procedure will likewise grant the prosecution equal opportunity to rebut petitioners' evidence.

In granting petitioners' motion for new trial, we reiterate our pronouncement in *Cano v. People*:

It is x x x equally settled that rules of procedure are not to be applied in a very rigid, technical sense and are used only to help secure substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. They should be liberally construed so that litigants can have ample opportunity to prove their claims and thus prevent a denial of justice due to technicalities.[22]

More importantly, we have settled that procedural rules can be suspended if matters of life, liberty, honor, and

property are at stake, thus:

In *Ginete vs. Court of Appeals*, we specifically laid down the range of reasons which may provide justifications for a court to resist a strict adherence to procedure and suspend the enforcement of procedural rules. Among such reasons x x x are: (1) matters of life, liberty, honor or property; (2) counsel's negligence without any participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; and (6) a lack of any showing that the review sought is merely frivolous and dilatory.[23]

We have also held that:

Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning `pleading, practice and procedure in all courts.' In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules. x x x

x x x x

We have made similar rulings in other cases, thus:

Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. x x xTime and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.[24]

While the information states that the accused failed to pay the RATA sometime in or about January to May 1999, there was no mention which budget the RATA was supposed to be sourced. Petitioners relied on the COA Auditor's testimony that they were being tried for nonpayment of benefits under the 1999 budget. The Special Audit Report does not also distinguish the budget source but upon the testimony of Balabaran, it was established that the source was the 1999 budget. Balabaran verified this when cross-examined by Sandiganbayan Justice Palattao. This distinction is material because conviction or acquittal depends on which budget source the information referred to. Thus, even if the 1998 budget was automatically reenacted in 1999, if the trial was clearly about the nonpayment of benefits under the 1999 budget as established by the prosecution, then petitioners could not be faulted for proceeding accordingly. The prosecution could have been clearer about the budget source through re-direct examination of Balabaran but it did not choose to do so. As always in criminal cases, the burden is on the prosecution to establish guilt beyond reasonable doubt based on sufficient information. It is not the responsibility of the accused to produce exculpatory evidence in a trial that does not demand it, as in this peculiar case where the prosecution failed to be clear about how they have allegedly been negligent in paying employee benefits.

The evidence sought to be introduced by the petitioners were presented in their Supplemental Motion for Reconsideration. Obviously, it was after their conviction that petitioners realized their mistake and belatedly presented their evidence which consist of (1) a certification dated May 11, 2004 by Abdurasad J. Undain, Provincial Auditor of Sulu, attesting to the payment of the RATA for the period January to May 1999 to officials of Sulu who were entitled to such benefit; (2) disbursement vouchers showing payment of RATA to provincial employees of Sulu for the period January to May 1999; and (3) sworn statements from the claimants of the RATA attesting to their receipt of RATA from January to May 1999. The Sandiganbayan noted how some of the disbursement vouchers were not signed by the claimants. Petitioners, however, were not given the chance to explain this alleged irregularity. The Sandiganbayan also completely disregarded the sworn statements from the claimants of the RATA which state that they did not have any complaint to its alleged nonpayment. It should be

remembered that petitioners are being charged with violation of Sec. 3(e) of RA 3019, an element of which is undue injury to any party. If the claimants of the RATA, the supposed injured parties, state that they received the RATA and have no complaints to its nonpayment, then these sworn statements could absolve petitioners. These documents should be weighed properly, its authenticity duly established by the accused, and the prosecution should be given the chance to rebut these pieces of evidence. Since we are not a trier of facts, we should remand this case to the Sandiganbayan.

As the court of last resort, we cannot and should not be hasty in convicting the accused when there are factual circumstances that could save them from imprisonment. In this case, the accused should be afforded the chance to prove the authenticity of documents which have a tendency to prove their innocence. Procedural rules should be interpreted liberally or even set aside to serve the ends of justice. Hence, we order the remand of Criminal Case No. 26192 to the Sandiganbayan for a new trial.

G.R. Nos. 164009-11

Petitioner Pescadera's defense consists of two arguments: (1) that the elements of the crime of malversation under Art. 217 of the Revised Penal Code were not present; and (2) that his failure to remit the GSIS contributions was due to the prioritization of other obligations of the Provincial Government of Sulu.

Pescadera claims that the elements of the crime of malversation were not met because there was no demand on him by the Provincial Auditor or by the Special Audit Team to account for the GSIS contributions. He submits that the prima facie presumption of malversation is not applicable when no written demand for accounting was given to him. Assuming that there was a demand, there is allegedly no direct evidence showing misappropriation of PhP 4,820,365.30. He asserts that he did not withdraw such amount from the provincial government funds. He submitted documents that show how the funds of the Provincial Government of Sulu were spent from July 1998 to May 23, 1999. These documents consisted of the monthly trial balance from August 31, 1998 to May 31, 1999; certified true copies of the journal of checks issued from July 1998 to May 7 to 30, 1999; certified true copies of the Treasurer's Journal Cash Disbursements from August 1998 to February 1999; and annual Audit Report for 1998 and 1999. Pescadera claims that the COA Special Audit Team merely examined the disbursement vouchers and the payrolls and found that the only irregularity was the non-remittance of the GSIS contributions and loan amortization.

Art. 217 of the Revised Penal Code provides:

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 consent, or through abandonment or negligence, shall permit any other person to take such funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation of such funds or property, shall suffer:

x x x x

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.

There is no dispute that Pescadera is a public officer who has control or custody of public funds and, thus, accountable for them. As to whether Pescadera misappropriated the GSIS premiums, he argues that the presumption of malversation does not apply because there was no demand on him.

The Sandiganbayan held that Pescadera failed to account for the GSIS premiums when demand was made by

Provincial Auditor Nora Imlan and the Special Audit Team, citing Exhibit "12-c." Pescadera points out, however, that Exhibit "12-c" referred to the "State Auditor's Opinion on the Financial Statements" herein reproduced:

The auditor rendered a qualified opinion on the fairness of the presentation of the financial statements due to management's failure to conduct physical inventory on its fixed assets and inventories as discussed in finding no. 1 and inability to conduct inspection on the infra projects under the 20% Development Fund.

SUMMARY OF SIGNIFICANT FINDINGS AND RECOMMENDATIONS

During the year under audit, the following are the findings and recommendations, to wit:

x x x x

2. Non-remittances [in] 1998 of various trust liabilities in violation of laws, rules, and regulations.

Require the Provincial Treasurer to remit all trust liabilities such as GSIS premiums/loans repayments/state insurance, MEDICARE AND PAGIBIG.[25]

We agree with Pescadera that this is not the demand contemplated by law. The demand to account for public funds must be addressed to the accountable officer. The above-cited letter was made by the Provincial Auditor recommending to the Chairperson of the COA to "require the Provincial Treasurer of Sulu to remit all trust liabilities such as GSIS premium/loans, repayments/state insurance, Medicare and Pag-ibig." Nowhere in the pleadings did the Special Prosecutor refute the lack of a formal demand upon Pescadera to account for the GSIS premiums. Pescadera even denies being informed of the conduct of the audit, an assertion which was not refuted by the prosecution. It can be concluded then that Pescadera was not given an opportunity to explain why the GSIS premiums were not remitted. Without a formal demand, the prima facie presumption of conversion under Art. 217 cannot be applied.

While demand is not an element of the crime of malversation,[26] it is a requisite for the application of the presumption. Without this presumption, the accused may still be proved guilty under Art. 217 based on direct evidence of malversation. In this case, the prosecution failed to do so. There is no proof that Pescadera misappropriated the amount for his personal use.

The elements of Art. 217 are: (1) the offender is a public officer, (2) he or she has custody or control of the funds or property by reason of the duties of his office, (3) the funds or property are public funds or property for which the offender is accountable, and, most importantly, (4) the offender has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them. The last and most important element of malversation was not proved in this case. There is no proof that Pescadera used the GSIS contributions for his personal benefit. The prosecution merely relied on the presumption of malversation which we have already disproved due to lack of notice. Hence, the prosecution should have proven actual misappropriation by the accused. Pescadera, however, emphasized that the GSIS premiums were applied in the meantime to the salary differentials and loan obligations of Sulu, that is, the GSIS premiums were appropriated to another public use. Thus, there was no misappropriation of the public funds for his own benefit. And since the charge lacks one element, we set aside the conviction of Pescadera.

WHEREFORE, the Decision dated April 16, 2004 of the Sandiganbayan in Criminal Case No. 26192 is SET ASIDE and the case is REMANDED to the Sandiganbayan for new trial on the alleged nonpayment of RATA. The Decision dated April 16, 2004 of the Sandiganbayan in Criminal Case No. 26193 is REVERSED and SET ASIDE, and Ernesto G. Pescadera is ACQUITTED of the charge against him. Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), and Brion, JJ., concur.

Carpio Morales, J., join the dissent of J., Tinga.

Tinga, J., please see dissenting opinion.

[1] Rollo (G.R. Nos. 163957-58), pp. 39-67. Penned by Associate Justice Norberto Y. Goraldez and concurred in by Associate Justices Gregory S. Ong and Efren N. dela Cruz.

[2] Id. at 220-221.

[3] Rollo (G.R. Nos. 164009-11), p. 197.

[4] Rollo (G.R. Nos. 163957-58), pp. 40-41.

[5] Id. at 44.

[6] Id. at 45.

[7] Id. at 47.

[8] Id. at 48-49.

[9] Id. at 49-50.

[10] Id. at 54-56.

[11] Id. at 56-57.

[12] G.R. No. 76490, October 6, 1995, 249 SCRA 24.

[13] Rollo (G.R. Nos. 163957-58), pp. 57-58.

[14] Id. at 58.

[15] Id. at 59-65.

[16] Id. at 65-66.

[17] Id. at 226.

[18] Id. at 22-23.

[19] Id. at 24-29.

[20] RULES OF COURT, Rule 121, Sec. 2 provides:

SEC. 2. Grounds for a new trial.--The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

[21] Supra note 18.

[22] G.R. No. 155258, October 7, 2003, 413 SCRA 92, 98.

[23] Philippine Economic Zone Authority v. General Milling Corporation, G.R. No. 131276, August 2, 2005 (En Banc Resolution).

[24] Agote v. Lorenzo, G.R. No. 142675, July 22, 2005, 464 SCRA 60, 69-70; citing Solicitor General, et. al. v. The Metropolitan Manila Authority, G.R. No. 102782, December 11, 1991, 204 SCRA 837, 842-843.

[25] Rollo (G.R. Nos. 164009-11), pp. 20-21.

[26] Madarang v. Sandiganbayan, G.R. No. 112314, March 28, 2001, 355 SCRA 525, 532-533.

CONCURRING AND DISSENTING OPINION

Tinga, J.:

The consolidated petitions are appeals from an 16 April 2004 Decision of the Sandiganbayan which convicted petitioners Munib Estino and Ernesto Pescadera in Criminal Case No. 26192, and petitioner Pescadera alone in Criminal Case No. 26193. The petitions in G.R. No. 163957-58 concern Criminal Case No. 26192, while the petitions in G.R. No. 164009-11 involve Criminal Case No. 26193. I concur with the draft ponencia with respect to its ruling in G.R. No. 164009-11 and will not dwell on those petitions in this opinion. However, with due respect, I submit that the majority's ruling that the petitioners-accused (accused) are entitled to a remand of Criminal Case No. 26192 is without legal basis. Because the majority has voted to grant the petitions in G.R. No. 163957-98, I respectfully dissent.

To recall, in Criminal Case No. 26192, the accused were adjudged guilty by the Sandiganbayan for violation of Section 3(e) of Rep. Act No. 3019, which specifically penalizes "[c]ausing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." Under Section 3(e), the elements of the offense are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[1]

In particular, the Sandiganbayan found that accused failed to pay the employees of the Provincial Government of Sulu their Representation and Travel Allowances (RATA), for which there was a budget allocation for. In their defense, accused submitted vouchers which allegedly showed the payment of RATA for the month of May 1999. However, the Sandiganbayan pointed out that said vouchers were not signed by the claimants. The Sandiganbayan also took note of the testimony of Mona Balabaran (Balabaran), a Commission on Audit State Auditor, who was part of the special audit team that audited the disbursement vouchers and payrolls of the provincial government of Jolo, Sulu for the period 27 July 1998 to 23 May 1999. Balabaran was among the signatories to the Special Audit Report dated 12 January 2000. The Report, Exhibit "A-2" for the prosecution, concluded that "no benefits were paid to the employees of Sulu Provincial Office for the period covered from January 1999 to May 1999 based on the submitted paid disbursement vouchers." [2]

Some context is necessary with respect to the budget situation during the period in question. The national government encountered considerable delay in enacting a budget for 1999, and the new 1999 budget was

approved only on 17 June 1999. From 1 January 1999 until 16 June 1999, the government and the Province of Sulu automatically operated under the reenacted 1998 budget. The petitioners' tenure as Vice-Governor and Provincial Treasurer ended on 23 May 1999, or weeks before the new budget was approved. Accordingly, they could not have been responsible for any disbursements sourced from the new 1999 budget, a fact which the Sandiganbayan acknowledged in its Decision.

At the same time, the anti-graft court still found accused liable for failure to pay the RATA from January to May 1999 on the premise that under the reenacted 1998 budget which was operative during those months, there were appropriations for the payment of RATA to the provincial employees.

Before this Court, the accused are making it appear that they were erroneously assumed during trial that they were being tried for failing to pay the RATA out of the new 1999 budget. Because of that erroneous assumption, they were precluded during trial from submitting evidence that proved they paid out the RATA out of the reenacted 1998 budget.

The majority rules that accused are entitled to submit their new evidence to prove their innocence through a remand of the case to the Sandiganbayan. This conclusion is justified in this manner:

xxx Although the documents offered by accused are strictly not newly discovered, it appears to us that accused were mistaken in their belief that its production during trial was unnecessary. In their Supplemental Motion and/or Motion for New Trial, they stress that they no longer presented the evidence of payment of RATA because [State Auditor] Balabaran testified that the subject of the charge was the nonpayment of benefits under the 1999 budget, without mention of the RATA nor the 1998 reenacted budget. It seems that they were misled during trial. They were precluded from presenting pieces of evidence that may prove actual payment of the RATA under the 1998 reenacted budget because the prosecution's evidence was confined to alleged nonpayment of RATA under the 1999 budget.[3]

I take exception to these conclusions, for the following reasons:

First. Under Section 2, Rule 121 of the 2000 Rules of Criminal Procedure, the accused may be granted a new trial on any of the following grounds: (1) that errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial; or (2) that new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.[4]

The majority concedes that the evidence which the accused now seeks to be introduced is "strictly not newly discovered." [5] The accused do not even bother to offer any argument that the evidence is new and material, or that they could not with reasonable diligence have discovered and produced the same at the trial. Instead, they claim that they were actually misled during the trial as to the true nature of the charges against them and thus saw no need to submit the now-challenged evidence in the course of the trial.

Thusly, there is no procedural rule that sanctions the recourse now sought by the accused. The majority attempts to establish one by allowing for "a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges against petitioners." [6] With due respect, I submit that no such "special circumstances" exist in this case.

Second. According to the Information in Criminal Case No. 26192, the accused were charged as follows:

That sometime in or about January to May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking

advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, cause undue injury to the employees of the Provincial Government of Sulu through evident bad faith by failing to pay them their salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and Representation Allowance (PERA), Representation and Travel Allowance (RATA), Mid-Year Bonus, Cash Gift and Clothing Allowance in the total amount of P8,435,625.34.

CONTRARY TO LAW.[7]

Accused have been duly and unequivocally informed that they were being charged for the failure to the provincial employees of Sulu their RATA, among other benefits, sometime in or about January to May of 1999. Because the Information is written the way it is, it is impossible for accused to claim that they were misled into not presenting evidence establishing that they either paid out the RATA, or that they paid out such RATA from January to May of 1999. The Information duly alerted accused that they were being made accountable to pay out the RATA from January to May of 1999.

Third. Under Section 323 of the Local Government Code, if the local sanggunian is still unable to pass the ordinance authorizing the annual appropriations after ninety (90) days from the beginning of the fiscal year, "the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect" until the new budget is enacted. That situation apparently occurred in Sulu in 1999, where the new budget was enacted only on 17 June 1999, or six months after the start of the fiscal year 1999.

The majority harps on a purported distinction between payment of RATA under the 1998 reenacted budget and payment of RATA under the 1999 budget, positing that the evidence of the prosecution was confined only to alleged nonpayment of RATA under the 1999 budget.

However, the Special Audit Report[8] which was duly presented as evidence for the prosecution unequivocally states, to repeat:

It was noted that no benefits were paid to the employees of Sulu Provincial Office for the period covered from January, 1999 to May, 1999 based on the submitted paid disbursement vouchers. (Annex E)[9]

The Special Audit Report stands as evidence duly presented of the nonpayment of RATA for the period from January to May of 1999. It cannot be claimed that there the evidence of the prosecution was confined only to nonpayment of RATA under the 1999 budget, since the Special Audit Report is proof that accused failed to pay out the RATA from January to May 1999, a period during which the local government of Sulu was operating under the 1998 reenacted budget. This evidence for the prosecution likewise aligns with the charge under the Information that accused failed to pay out the RATA from January to May of 1999.

The majority's distinction would have mattered if accused were specifically charged in the Information with failing to pay out the RATA out of the appropriations provided in the new 1999 budget. That is not what the Information or the Special Audit Report provides, as they were charged with failing to pay out the RATA from January to May 1999 without qualification as to the source of the appropriation. The majority's distinction would have also mattered if the only evidence presented during trial by the prosecution was limited to proving that accused failed to pay out the RATA from the appropriations of the new 1999 budget. The Special Audit Report is proof that the evidence submitted was not merely confined to proving that the unpaid RATA came from the new 1999 budget.

The distinction may have also been material if in fact the 1998 budget reenacted for 1999 had not provided for the payment of RATA. In such a case, petitioners could have validly relied on the distinction, claiming they had no fiscal means to pay the RATA while in office from January to May of 1999, and that they were no longer holding

office at the time the 1999 budget was finally enacted on 16 June 1999. Yet it is undisputed by all parties that the reenacted 1998 budget did provide for the payment of RATA to the Sulu government employees.

Fourth. It would be incredible for accused to assume all along in good faith that they were being tried for failing to pay the RATA out of the reenacted 1998 budget. That was the only budget in operation from January to May of 1999, the periods specified in the Information against them. Moreover, they very well knew that their tenure as Acting Governor and Provincial Treasurer had expired well before the 1999 budget finally came into effect and that they had no opportunity to expend public funds from that source.

The reason why they have to insist on such ignorance is that they need some modicum of a reason to sneak in the new evidence they failed to present during trial. Hence, the ploy without manifest basis that they were misled during trial as to the nature of the charges against them. This claim is anchored on a supposed admission by Balabaran during her testimony before the Sandiganbayan that the accused were investigated and charged for failing to pay the RATA out of the 1999 budget. Hereunder is the cited testimony of Balabaran, as quoted in the petition:

Q.

I show to you, Madam Witness, your Audit Report dated January 12, 2000, and I call your attention on the finding in page 5 thereof which reads: "On the allegation that no payments were made intended for the salary differentials, ACA, PERA, and other benefits of the employees of the Provincial Government of Sulu for the period covered from January 1999 to May 1999." Now, it is stated here that no payments of the said benefits of the employees were made from January 1999 to May 1999. My question is, when you said benefits of the employees you are referring to the benefits of the employees provided for in the 1999 Budget? Please go over this Report.

(Witness looking at the document)

A.

You want me to explain?

AJ PALATTAO:

What benefit are you referring?

A.

We are referring to the benefits that was to be paid, your Honor, the ACA, the PERA, and the other benefits.

Q.

Yes, and those benefits that you are referring to are the benefits provided for in the Annual Budget for the Year 1999?

AJ PALATTAO:

Are you referring to a benefit granted to the employees under the 1999 Annual Budget? Yes or not?

A.

The benefits that are intended to the employees for the year 1999.

Q.

1999. You are not referring to the benefits of the employees provided for in the 1998 budget?

A.

Yes, it is very clear, January 1999 to May 1999.

Q.

It is only in 1999?

A.

Yes, Sir.[10]

This passage cannot be taken as a definitive indication that the People of the Philippines was confining its prosecution of accused for failing to pay the RATA out of the 1999 budget. Notably, this line of questioning was not prefaced with any distinction between the 1998 reenacted budget and the 1999 budget. The witness may have very well understood the questions as referring to the year when the benefits should have been paid out, and not the technical source of such funding. Perhaps this passage may have borne materiality had Balabaran's testimony been the sole evidence presented against the accused to establish their failure to duly release the RATA benefits, but it is not.

Moreover, accused cannot legitimately claim that Balabaran's supposed admission somehow precluded them from presenting evidence that they did release the RATA benefits sourced from the reenacted 1998 budget. The Information, as well as the Special Audit Report, are unequivocal in accusing accused of failing to release the RATA benefits while they were in office from January to May of 1999. Since the only budget for Sulu in effect during that period was the reenacted 1998 budget, accused very well knew when the trial began that it was for their failure to disburse the RATA out of such reenacted budget, and no other, that they were being called to account. In no way could Balabaran's testimony have amended the Information or the Special Audit Report, or somehow reoriented respondents as to the true nature of the charges no matter what the Information said.

Fifth. The new evidence which accused desire to introduce is uncomfortably precise, oriented as it is to rebut the justifications cited by the Sandiganbayan to convict them. Convicted felons will not pass up the chance to manufacture exculpatory evidence created in reaction to the decision that convicted them.

The new evidence which accused submitted in their Supplemental Motion for Reconsideration before the Sandiganbayan consists of: (1) a certification dated 11 May 2004 (or after the conviction of the accused) by Abdurasad J. Undain, Provincial Auditor of Sulu, attesting that the RATA for the period January to May 1999 of all officials of Sulu who were entitled to such benefit had been paid out; and (2) approximately eighty three (83) Disbursement Vouchers purportedly proving the payment of RATA to several Sulu provincial employees from January to April 1999. Notably, accused had duly introduced into evidence similar disbursement vouchers, covering the month of May 1999, but the Sandiganbayan discounted such evidence, noting that "the same were not signed by the claimants thereof." [11] It bears notice that this time, the January-April disbursement vouchers accused now want to enter into evidence are signed by the claimants thereof. [12]

The observations of the Office of the Solicitor General with respect to the January-April disbursement vouchers bears repeating:

2. Aside from not being part of the evidence presented, a cursory examination of said disbursement vouchers revealed that the same suffer from numerous irregularities. They do not bear the dorsal portion of the vouchers nor the signature of the Provincial Auditor. It therefore cannot be determined if the same were liquidated and passed on audit by the Commission on Audit.

3. Many of the vouchers do not contain the signatures of the supposed claimants and/or recipients. Some were

signed for the claimants by persons who neglected to attach any proof of their authority to so sign in behalf of their principals.

4. The vouchers also showed that in patent violation of Presidential Decree No. 1445, the RATA were paid in cash instead of through checks.

5. It bears mentioning at this point that if indeed, as petitioners claim, the RATA were paid during their incumbency, it would have been logical to present as evidence in this manner and in their favor, if not the aforementioned disbursement vouchers and sworn statements, at least the pertinent payroll which every recipient government official is required to sign by way of acknowledgment of receipt of the RATA. And yet, inconceivably, petitioners neglected to do so.[13]

It may be that since this Court is not a trier of fact, we will not be in a position to affirm these factual allegations of the OSG, even if these can be facially confirmed upon examining the aforementioned vouchers. Nonetheless, the question before us is simply whether accused may be entitled to a new trial, even though the Rules of Criminal Procedure squarely reject their legal arguments. Our allowing a new trial for the accused rests solely on our beneficence, and may ultimately depend on our belief whether accused' arguments unsettle our belief that they are guilty beyond reasonable doubt. Unfortunately for them, I am convinced that despite the purported "new evidence," the introduction of which has utterly no basis in law, accused are guilty beyond reasonable doubt and the disposition of the Sandiganbayan in Criminal Case No. 26192 is correct.

I VOTE to DENY the petitions in G.R. Nos. 163957-58 and affirm the convictions in Criminal Case No. 26192. I concur with the majority in granting the petitions in G.R. Nos. 164009-11 and acquitting petitioner Ernesto Pescadera in Criminal Case No. 26193.

[1] See Valencia v. Sandiganbayan, G.R. No. 141336, 29 June 2004, 433 SCRA 88, 96.

[2] Records, pp. 206-207.

[3] Draft ponencia, p. 16.

[4] See RULES OF CRIMINAL PROCEDURE, Rule 121, Sec. 2.

[5] See note 3.

[6] Supra note 3 at 16.

[7] Rollo, p. 40.

[8] Records, pp. 203-208.

[9] Id. at 207.

[10] Rollo, pp. 13-14.

[11] Id. at 48.

[12] See id. at 125-209.

[13] Id. at 382-383.

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