

PEOPLE OF THE PHILIPPINES, VS. TEDDY M. PAJARO, CRISPINA P. ABEN AND FLOR S. LIBERTAD, APPELLANTS.*G.R. Nos. 167860-65. June 17, 2008*

Ponente: YNARES-SATIAGO, J.

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This petition for review on certiorari assails the January 19, 2005[1] Decision of the Sandiganbayan which found appellants guilty of four (4) counts of malversation of public funds through falsification of public documents and two (2) counts of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case Nos. 26728 to 26733 and its March 21, 2005 Resolution[2] denying the motion for reconsideration.

Appellant Teddy M. Pajaro (Pajaro) was the Municipal Mayor of Lantapan, Bukidnon from 1989 to 1998; while appellants Crispina Aben (Aben) and Flor S. Libertad (Libertad) served as acting Municipal Accountant and Municipal Treasurer respectively. During their term of office, specifically from September 1997 to March 1998, they allegedly caused the irregular disbursement of public funds as financial assistance pursuant to livelihood projects and IEC-Peace and Order Program in the respective amounts of P179,000.00 and P140,000.00. In a special audit of certain disbursements made during Pajaro's administration, State Auditor Rogelio Tero (Auditor Tero) noted that P74,000.00 of the money disbursed was not actually received by the intended beneficiaries who were chosen arbitrarily; and that the disbursements were irregularly processed and released to the prejudice of the local government.[3]

During preliminary investigation, Pajaro maintained that the subject disbursements were made pursuant to Resolutions issued by the Sangguniang Bayan of Lantapan and the Municipal Development Council approving and adopting respectively, 20% of the municipal budget to be used for its local development programs such as livelihood projects and intelligence data-gathering. He explained that the vouchers and the Requests for Obligation of Allotments (ROAs) lacked certification by the municipal budget officer because the latter refused to sign the documents despite the presence of supporting papers. He belied the audit's finding that the beneficiaries of the program were chosen arbitrarily and averred that such beneficiaries attended a three-day orientation program and were required to submit project proposals subject to review by the project coordinator; that non-government organizations were also tapped to ensure a wider coverage in the selection of beneficiaries. Pajaro also presented affidavits of alleged beneficiaries Anecito Penar (Penar) and Angelita Lacerna (Lacerna) to prove that they received the disbursed amounts. He also stated that the financial assistance under the IEC-Peace and Order Program in the amount of P140,000.0 was properly chargeable to intelligence funds and may be justified solely on the certification of the head of agency that the funds were used for a highly confidential project, the details of which cannot be divulged without posing a threat to security or the success of the mission. Pajaro admitted there were accounting lapses relative to the charging of these payments but same were eventually corrected by appellant Aben, hence no project duly covered by the municipal budget was impaired.[4] Appellants Aben and Libertad pleaded the same defenses in their counter-affidavits.[5]

Finding probable cause, the Office of the Ombudsman filed four Informations for Malversation of Public Funds

thru Falsification of Public Documents defined and penalized under Article 217 in relation to Article 171 of the Revised Penal Code against appellants. Save for the date of commission of the offense, the nature of the livelihood project, its beneficiaries and the amount allegedly misappropriated, the Informations were similarly worded as follows:

That on or about (September 16, 1997 in Criminal Case No. 26728, November 24, 1997 in Criminal Case No. 26729, December 10, 1997 in Criminal Case No. 26730 and February 18, 1998 in Criminal Case No. 26731), in the Municipality of Lantapan, Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the accused TEDDY M. PAJARO, a high-ranking public officer, being then the Municipal Mayor of Lantapan, Bukidnon, and accused CRISPINA ABEN and FLOR S. LIBERTAD, both low-ranking public officers, being then the Municipal Accountant and Municipal Treasurer, respectively, of Lantapan, Bukidnon, conspiring and confederating with one another, who, by reason of the duties of their office are accountable for public funds, while in the performance of their official duties and taking advantage of their positions, thus committing the offense in relation to their office, did then and there, willfully, unlawfully, and feloniously, appropriate, take, misappropriate or consent or permit another person to take public funds for their own personal use and benefit in the amount of (P15,000.00 in Criminal Case No. 26728, P25,000.00 in Criminal Case No. 26729, P24,00.00 in Criminal Case No. 26730 and P10,000.00 in Criminal case No. 26731) purportedly intended as payment of financial assistance for corn production livelihood project to (Anecito Penar, in Criminal Case No. 2678, 26729 and 26731; Angelita "Didith" Lacerna in Criminal Case No. 26730) by falsifying the disbursement voucher and the supporting documents and making it appear that said amount was received by said (Anecito Penar in Criminal Case Nos. 2678, 2679 and 26731; Angelita "Didith" Lacerna in Criminal Case No. 26730), when in truth and in fact, as the accused well knew, (Anecito Penar in Criminal Case Nos. 26728, 26729 and 26731; Angelita "Didith" Lacerna in Criminal Case No. 26730) never received the said amount, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.

Also, two Informations[6] for violation of Section 3, paragraph (e) of Republic Act No. 3019[7] were filed against appellants, thus:

That on or about November 1997 to March 1998, or sometime prior or subsequent thereto, in the Municipality of Lantapan, Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the accused TEDDY M. PAJARO, a high-ranking public officer, being then the Municipal Mayor of Lantapan, Bukidnon, and accused CRISPINA ABEN and FLOR S. LIBERTAD, both low-ranking public officers, being then the Municipal Accountant and Municipal Treasurer, respectively, of Lantapan, Bukidnon, conspiring and confederating with one another, while in the performance of their official duties and taking advantage of their positions, thus committing the offense in relation to their office, through manifest partiality or evident bad faith, did then and there, willfully, unlawfully, and criminally, cause undue injury to the Government in the amount of (P179,000.00 in Criminal Case No. 26732 and PP140,00.00 in Criminal Case No. 26733) by releasing and/or causing the release of the aforesaid amount (for purported livelihood projects in Criminal Case No. 26732 and as purported financial assistance under the IEC-Peace and Order program in Criminal Case No. 26733) without the approval or knowledge of the Municipal Budget Officer, without being supported with complete documents and without any terms and conditions for its repayment, benefiting individuals arbitrarily chosen, to the damage and prejudice of the government in the aforesaid amount(s).

CONTRARY TO LAW.

Appellants filed a Motion for Reinvestigation[8] but it was denied by the Sandiganbayan in its Order[9] dated December 3, 2001. Upon arraignment all three pleaded not guilty.[10]

At the trial, Auditor Tero testified to the veracity of the findings in the audit report as follows:

I. With respect to the amount of P179,000.00 for livelihood projects:

a.)

a total of P74,000.00 in 4 disbursement vouchers were disbursed using the names of Anecito Penar and Didith Lacerna who did not actually receive the amount;

b.)

12 disbursement vouchers for the payment of financial assistance for livelihood projects were paid in cash instead of check, bypassing the Office of the Municipal Budget Officer and charging other items of appropriations of the budget not intended for livelihood projects;

c.)

The grant of financial assistance under 12 disbursement vouchers were not supported with complete documents;

d.)

The amount of P179,000.00 was released without any terms and conditions for its repayment;

e.)

The financial assistance of P179,000.00 benefited only individuals arbitrarily chosen.

II. With respect to the payment and reimbursement of expenses amounting to P140,00.00 as financial assistance for IEC-Peace and Order program:

a.)

all 8 disbursement vouchers covering the payment and reimbursement of expenses were paid bypassing the Office of the Municipal Budget Officer and charging the payments to other budget appropriations not intended for IEC-Peace and Order program;

b.)

The payment of financial assistance under the 8 disbursement vouchers were not supported with complete documents;

c.)

The amount of P140,000.00 paid as reimbursement and payment of financial assistance were paid without any terms and conditions for its repayment;

d.)

The financial assistance of P140,000.00 benefited only individuals arbitrarily chosen.[11]

The auditor stressed that under COA rules and regulations,[12] the certification of the budget officer is a mandatory requirement for the disbursement of public funds.[13]

Municipal Budget Officer Dioscoro Rara (Rara) corroborated the audit report and averred that the documents in question do not bear his signature and lacked certification as required by law because the same did not pass through his office in contravention of the standard procedure. [14]

Penar and Lacerna denied signing the questioned documents[15] and receiving the amounts of P50,00.00 and P24,000.00 respectively from appellant Libertad.[16] Although Penar admitted signing two affidavits dated June 8

and July 24, 2000 attesting that he is a beneficiary of the livelihood program and receiving the amount of P50,000.00, Penar explained however that he did not read the contents of the affidavits but he signed them upon appellant Pajaro's prodding. Penar claimed that after signing the second affidavit, Pajaro gave him P700.00 for his fare and pocket money.[17]

Lacerna also admitted executing an affidavit[18] dated March 13, 2000 before Municipal Judge Febrestina Villanueva stating that she did not sign Voucher No. 166 nor did she receive P24,000.00 as financial assistance. When confronted with two subsequent affidavits[19] containing statements in contradiction of her previous declarations, she explained that the signatures contained therein were hers; however, she claimed that she signed the affidavits without reading the contents because appellant Pajaro assured her that her brother has received the money on her behalf.[20]

For his part, appellant Pajaro claimed that the disbursements were properly made pursuant to approved resolutions of the Sangguniang Bayan and the Municipal Development Council and were provided for in the Municipal Budget Plan for 1998. He stated that as municipal mayor, his role was limited to approving the vouchers with respect to the disbursement of local funds[21] and he usually does not have any personal knowledge whether the amounts disbursed were received by the intended beneficiaries except in the case of Penar whom he personally know and Lacerna whose brother received the money on her behalf. He insisted that the subject documents were executed according to procedure save for the budget officer's certification because the municipal budget officer unjustifiably refused to affix his signature on the documents despite the supporting attachments. [22]

Delilah Gayao, a casual employee in the municipal accounting office in charge of processing the disbursement documents, corroborated Pajaro's testimony and stated that the Municipal Budget Officer refused to sign the subject vouchers and its corresponding ROAs when they were brought to his office for certification.[23]

Appellant Aben alleged that she processed the subject vouchers even without prior certification from the budget officer because she knew that there is a sufficient budget for it. Moreover, she claimed that Pajaro directed her to expedite the release because the beneficiaries were in dire need of financial assistance.[24] She further averred that as a matter of procedure, whenever proper disbursements are erroneously charged to other appropriations she makes the necessary adjustments in the entries in the municipality's Journal of Analysis and Obligations (JAO) at the close of every fiscal year.[25] Aben stated that even without Pajaro's directive and prior certification from the budget officer she would still obligate the ROAs and its corresponding vouchers as a matter of course because sufficient funding exists to support its disbursement.

Appellant Libertad averred that she served as the acting disbursement officer who personally released the money to Penar and Lacerna, the latter being accompanied by her brother when the money was given to her.[26]

Lacerna's brother, Roberto Ramos (Ramos), corroborated the testimonies of Pajaro and Libertad that he was with his sister when she personally received the money from Libertad.[27]

On January 19, 2005, the Sandiganbayan rendered the assailed Decision, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered finding the three accused, Teddy Pajaro, Crispina Aben, and Flor Libertad guilty beyond reasonable doubt of the offense charged in the six (6) informations and sentencing each of them to suffer the following penalties:

- In Criminal Case No. 26728 - imprisonment of thirteen (13) years, one (1) month, and eleven (11) days to eighteen (18) years, two (2) months, and twenty-one (21) days of reclusion temporal, as minimum and maximum, respectively - and to pay a fine P15,000;
- In Criminal Case No. 26729 - reclusion perpetua - and to pay a fine of P25,000;

- In Criminal Case No. 26730 - reclusion perpetua - and to pay a fine of P24,000;
- In Criminal Case No. 26731 - imprisonment of eight (8) years, eight (8) months, and one (1) day of prison mayor to thirteen (13) years, one (1) month and eleven (11) days of reclusion temporal as minimum and maximum, respectively - and to pay a fine of P10,000;
- In Criminal Case No. 26732 - imprisonment of six (6) years and one (1) month to ten (10) years; and
- In Criminal Case No. 26733 - imprisonment of six (6) years and one (1) month to ten (10) years.

In the service of the sentence, the duration of their total imprisonment shall not exceed forty (40) years.

The three (3) accused are also sentenced to suffer perpetual special disqualification, and to pay and indemnify, jointly and severally, the government the amounts of P179,000 and P140,000, or a total of P319,000 plus costs.

SO ORDERED.[28]

Appellants filed a Motion for Reconsideration which was denied by the Sandiganbayan in its Order[29] dated March 21, 2005; hence this appeal.

The Office of the Special Prosecutor (OSP) argues that appellants failed to dispute the evidence adduced against them; and that the Sandiganbayan correctly found the documents containing the alleged signatures of Lacerna and Penar as falsified.

On the other hand, appellants argue[30] that the Sandiganbayan overlooked some documentary evidence which if considered would cast doubts on the validity of its conclusions; that Penar and Lacerna were unreliable as shown by the contradictions and inconsistencies in their statements as contained in their affidavits as well as those made during the trial.

The appeal lacks merit.

Appellants are charged, in conspiracy with each other, with the complex crime of Malversation of Public Funds thru Falsification of Public Documents defined and penalized under Article 217, in relation to Article 171 of the Revised Penal Code, the elements of which are as follows:

- a.) The offender is a public officer;
- b.) He has custody or control of the funds or property by reason of the duties of his office;
- c.) The funds or property are public funds or property for which he is accountable; and
- d.) He has appropriated, taken, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.[31]

It is undisputed that appellants are all public officers and the funds allegedly misappropriated are public in character. Appellant Libertad, by reason of her office as Municipal Treasurer had custody and control of such funds and is therefore accountable for the same. Ordinarily, a municipality's mayor and accountant are not accountable public officers as defined under the law. However, a public officer who is not in charge of public funds or property by virtue of his official position, or even a private individual, may be liable for malversation if such public officer or private individual conspires with an accountable public officer to commit malversation,[32] as in the instant case.

In finding that appellants misappropriated the said public funds, the Sandiganbayan ruled on the authenticity of the signatures of the alleged beneficiaries Penar and Lacerna on the disbursement vouchers as follows:

[T]he two affidavits of Penar dated June 8, 2000, and July 24, 2000, respectively relied on by the defense, and therefore bound by them, unwittingly show his true and real signature as one "Penar," signed without a

"longhand A" like his two (2) signatures in his other affidavits, as distinguished from the signatures in the questioned documents x x x where the alleged signatures of Penar were signed with a "longhand A" or "APenar", thereby showing that the signatures in the said vouchers and receipts are not the signatures of Anecito Penar but are forged or falsified signatures. Simply stated, Penar's true and real signature is the one reflected in his affidavits which is different from the signatures affixed in the questioned documents.

In the same manner, the two affidavits of Angelita Didith Lacerna dated June 26, 2000 and July 24, 2000, respectively, that state that she allegedly received the subject amounts, also relied upon by the defense and therefore also bound by them, likewise show her true and real signature which is a sort of initials on top of her full name like her signatures in her other affidavits, which are different from the signatures in the disbursement voucher and expense receipt which spell out her family name "DLacerna," thereby showing that these signatures are not her true signatures. Otherwise said, Lacerna's true and real signature is the one affixed in her affidavits and not the one in the vouchers and receipts.[33]

We agree with the Sandiganbayan's findings that the differences in the alleged beneficiaries' signatures are so evident that there is no need for an expert opinion.[34] Both Penar and Lacerna categorically denied that the signatures on the subject vouchers were their signatures; or that they received the money allegedly disbursed to them.

That Penar and Lacerna signed several affidavits prior to their testimonies does not totally impair the credibility of their averments. Contradictions between the contents of an affidavit of a witness and his testimony on the witness stand do not always militate against the witness' credibility. It is established jurisprudence that affidavits, which are taken ex-parte are generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross-examination.[35]

There is no doubt that appellants facilitated the illegal release of the funds by signing the subject vouchers. Without their signatures, said monies could not have been disbursed. Pajaro, as Mayor, initiated the request for obligation of allotments and certified and approved the disbursement vouchers; Aben, as Acting Municipal Accountant, obligated the allotments despite lack of prior certification from the budget officer. Municipal Treasurer Libertad certified to the availability of funds and released the money even without the requisite budget officer's certification. Their combined acts, coupled with the falsification of the signatures of Penar and Lacerna, all lead to the conclusion that appellants conspired to defraud the government.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.[36]

Appellants were also correctly found liable of violation of Section 3(e) of Republic Act No. 3019, as amended, the elements of which are as follows:

- 1.) the accused must be a public officer discharging administrative, judicial or official functions;
- 2.) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- 3.) that his 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 functions.[37]

The first element is not disputed; thus what needs to be resolved is the presence of the second and third elements, that is, whether as public officers, appellants acted with manifest partiality or evident bad faith and caused undue

injury to the government in the respective amounts of P179,000.00 and P140,000.00.

Appellants admitted that the disbursements were made in cash in violation of Section 9 of COA Circular 92-382 which provides that all disbursements shall be made by check except in cases where cash advance is drawn and maintained according to COA rules. When appellants disbursed the amounts in cash, purportedly for reasons of expediency and practicality, they did not only make it difficult to keep track of the disbursements' whereabouts but they also engendered suspicion that they were hiding something. Had they followed the prescribed procedure and released the funds in the form of checks, they would have had documents at their disposal to prove the legitimacy of said transactions.

Appellants' contention that the subject disbursements lacked prior certification by the municipal budget officer because the latter unjustifiably refused to sign the disbursement vouchers and ROAs deserves scant consideration. As correctly observed by the Office of the Ombudsman, if that was indeed the case, it is surprising to note that no action, administrative or otherwise, was instituted by appellant Pajaro against the budget officer. We are more inclined to give credence to the budget officer's categorical statement that he was not able to sign the ROAs because the documents were not presented for his signature.

COA Circular No. 92-382 issued on July 3, 1992 by the Commission on Audit laid down accounting and auditing rules and regulations designed to implement the provisions[38] of Republic Act No. 7160, otherwise known as the Local Government Code of 1991. It is issued pursuant to the constitutional authority[39] of the COA to define the scope of audit, make rules and disallow unnecessary expenditures in the government. The circular is addressed to public officers concerned with accounting and auditing of local funds such as mayors, local treasurers, accountants and budget officers among others. It provides the prescribed accounting system for expenditure and transfers of local funds as follows; First, the ROA shall be initially certified by the budget officer with respect to the existence of appropriation that has been legally made for the purpose by signing Certification No. 1 therein; Second, the treasurer shall certify that funds are available by signing Certification No. 2; Third, the accountant shall review the ROA, assign an obligation number thereto, and record the amount of the obligation in the Journal and Analysis of Obligations (JAO) before certifying as to the obligation of the allotment by signing the ROA.[40] Since the rules clearly delineate the procedure for disbursement of public or local funds there was no reason for appellants to make judgment calls and substitute their own interpretation of the above provision.

The third element of the offense penalized in Section 3 (e) is satisfied when the questioned conduct causes undue injury to any party, including the government, or gives any unwarranted benefit, advantage or preference in the discharge of his functions to any private party. Proof of the extent or quantum of damage is thus not essential, it being sufficient that the injury suffered or benefit received can be perceived to be substantial enough and not merely negligible.[41] The prosecution's evidence satisfactorily demonstrated that by countervailing the clearly delineated procedure laid down in COA Circular 92-382, appellants defrauded the government of a much needed resource by facilitating the release of local funds which no one can account for and which did not reach the pockets of its intended recipients.

WHEREFORE, the petition is DENIED. The January 19, 2005 Decision of the Sandiganbayan finding appellants guilty of four (4) counts of malversation of public funds through falsification of public documents and two (2) counts of violation of Sec. 3(e) of R.A. No. 3019, as well as the March 21, 2005 Resolution denying the Motion for Reconsideration are AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and Brion, JJ., concur.

[*] Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

[1] Rollo, pp. 42-86. Penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Gregory S. Ong and Jose R. Hernandez.

[2] Id. at 94-101.

[3] Special Audit and Investigation Report dated March 21, 2000; Records, Vol. I, pp. 316-333.

[4] Records, Vol. I, pp. 15-23.

[5] Id. at 24-41.

[6] Rollo, pp. 31-34.

[7] ANTI-GRAFT and CORRUPT PRACTICES ACT.

[8] Records, Vol. 1, pp. 104-112.

[9] Id. at 119.

[10] Id. at 118.

[11] Id. at 3-4.

[12] Particularly Section 57 of COA Circular No. 92-382 (July 3, 1992) which states that: "The budget officer shall certify to the existence of appropriation that has been legally made for the purpose by signing Certification No. 1 of the ROA."

[13] TSN, June 24, 2002, p. 34; Section 38, COA Circular No. 92-382.

[14] TSN, August 27, 2002, pp. 15, 18, 19 and 23.

[15] Voucher Nos. 2612; 3005 and 516 for Penar and Voucher No. 166 for Lacerna; Records, Vol. I, pp. 353, 337, 340 and 376.

[16] TSN, June 25, 2002, pp. 10-12 and 40-41.

[17] Id. at 23-25, 35.

[18] Id. at 343-344.

[19] Dated June 26 and July 24, 2000 respectively.

[20] Id. at 42-44, 46-49; TSN, August 27, 2002, pp. 4-8, 10-11.

[21] Section 39, COA Circular No. 92-382.

[22] TSN, August 5, 2003, pp. 10-11; 15-16; 21; 32; 43-44.

[23] Id. at 56-59.

[24] Id. at 74-76; 80-81.

[25] Id. at 4-8.

[26] Id. at 88-95.

[27] Id. at 65.

[28] Rollo, pp. 357-403.

[29] Id. at 404-411.

[30] Id. at 141-263.

[31] Barriga v. Sandiganbayan, G.R. Nos. 161784-86, April 26, 2005, 457 SCRA 301, 314.

[32] Id.

[33] Rollo, pp. 74-75.

[34] Id.

[35] Cariaga v. Court of Appeals, G.R. No. 143561, June 6, 2001, 358 SCRA 583, 593.

[36] People v. Garcia, G.R. No. 138470, April 1, 2003, 400 SCRA 229, 238.

[37] Soriquez v. Sandiganbayan, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 228.

[38] Section 344 thereof states that- No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. x x x

[39] CONSTITUTION, Art. IX-D, Sec. 2(2).

[40] Sections 57, 58 and 59, COA Circular No. 92-382.

[41] Fonacier v. Sandiganbayan, G.R. Nos. 50691, 52263, 52766, 52821, 53350, 53397, 53415, 53520, December 5, 1994, 238 SCRA 655, 688.

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