

PEÑAFLOR PEÑAVERDE, PETITIONER, VS. THE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 63271-74. August 30, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioners Peñaflor Peñaverde and Melecio Hermita seek to set aside the decision of respondent Sandiganbayan, convicting them of the crimes of falsification of public documents and malversation of public funds on three (3) counts. The informations filed against them read, as follows:

"Criminal Case No. 2135–For

Falsification of Public

Document

"That on or about November 18, 1978, in the Municipality of Minalabac, Camarines Sur and within the jurisdiction of this Honorable Court, accused Peñaflor Peñaverde, a public officer and discharging his official functions as Barangay Captain of Barangay Manapao, Minalabac, Camarines Sur and accused Melecio Hermita, likewise a public officer discharging his official function as Kagawad in the Sangguniang Bayan of Minalabac, Camarines Sur, taking advantage of their official positions and committing said acts in relation to their office, conspiring, conniving and confederating with each other, in order to conceal their misappropriation of the amount of P500.00 earmarked for labor expenses, did then and there willfully, unlawfully and feloniously falsify the Certificate of Project Completion and Turn-Over by making it appear that the Foot-Path Project of Barangay Manapao was completed and turned over to the barangay people on said date when in truth and in fact it was not so which accused fully knew, thereby causing damage and prejudice to the public service.

"CONTRARY TO LAW.

"Criminal Case No. 2136 – For

Malversation of Public Funds

"That on or about October 7, 1978, in the Municipality of Minalabac, Camarines Sur and within the jurisdiction of this Honorable Court, accused Peñaflor V. Peñaverde being then a public officer and discharging his official function as the Barangay Captain of Barangay Manapao, Minalabac, Camarines Sur and therefore accountable for Barangay Improvement and Development Assistance (BIDA) funds collected and received by him by reason of such position and accused Melecio C. Hermita, likewise a public officer then Kagawad in the Sangguniang Bayan of Minalabac, Camarines Sur, taking advantage of their official positions and conspiring, conniving and confederating with each other, did then and there willfully, feloniously and fraudulently misappropriate, embezzle and take away from said funds for which they are both accountable, the total sum of THREE HUNDRED PESOS (P300.00), Philippine Currency, which they appropriated and

converted to their own personal use and benefit, which amount represents a part of the BIDA funds allotted for Barangay Manapao, to the damage and prejudice of the government in the aforesaid amount.

"CONTRARY TO LAW.

"Criminal Case No. 2137– For

Malversation of Public Funds

"That on or about December 27, 1978, in the Municipality of Minalabac, Camarines Sur and within the jurisdiction of this Honorable Court, accused Peñaflor V. Peñaverde being then a public officer and discharging his official function as the Barangay Captain of Barangay Manapao, Minalabac, Camarines Sur and therefore accountable for Barangay Improvement and Development Assistance (BIDA) funds collected and received by him by reason of such position and accused Melecio Hermita, likewise a public officer then Kagawad in the Sangguniang Bayan of Minalabac, Camarines Sur, taking advantage of their official positions and conspiring, conniving and confederating with each other, did then and there willfully, unlawfully, feloniously and fraudulently mis-appropriate, embezzle and take away from said funds for which they are both accountable, the total sum of FIVE HUNDRED PESOS (P500.00), Philippine Currency, which they appropriated and converted to their own personal use and benefit, which amount represents part of the BIDA funds allotted for Barangay Manapao, to the damage and prejudice of the government in the aforesaid amount.

"CONTRARY TO LAW.

"Criminal Case No. 2138 – For

Malversation of Public Funds

"That on or about October 11, 1978 in the Municipality of Minalabac, Camarines Sur and within the jurisdiction of this Honorable Court, accused Peñaflor V. Peñaverde being then a public officer and discharging his official function as the Barangay Captain of Barangay Manapao, Minalabac, Camarines Sur and therefore accountable for Barangay Improvement and Development Assistance (BIDA) funds collected and received by him by reason of such position and accused Melecio C. Hermita, likewise a public officer then Kagawad in the Sangguniang Bayan of Minalabac, Camarines Sur, taking advantage of their official positions and conspiring, conniving and confederating with each other, did then and there willfully, unlawfully, feloniously and fraudulently misappropriate, embezzle and take away from said funds for which they are both accountable, the total sum of ONE THOUSAND EIGHT HUNDRED NINETY SEVEN PESOS (P1,897.00), Philippine Currency, which they appropriated and converted to their own personal use and benefit, which amount represents a part of the BIDA fund allotted for Barangay Manapao, to the damage and prejudice of the government in the aforesaid amount.

"CONTRARY TO LAW."

(pp. 89-91, Rollo)

After trial, respondent Sandiganbayan promulgated a decision in the four (4) cases, the dispositive portion of which reads:

"WHEREFORE, finding the two accused Peñaflor V. Peñaverde and Melecio C. Hermita, guilty beyond reasonable doubt of the crimes of Falsification of Public Document, in Criminal Case No. 2135, and in three counts of Malversation of Public Funds in Criminal Cases Nos. 2136, 2137, and 2138, without migrating nor aggravating circumstances and applying the Indeterminate Sentence Law, the Court hereby sentences each of them to suffer the following penalties.

"1. In Criminal Case No. 2135 for Falsification of Public Document, each of them shall suffer an indeterminate penalty of from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correctional, as

minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as maximum, and to pay a fine in the amount of FIVE HUNDRED PESOS (P500.00);

"2. In Criminal Case No. 2136 for Malversation of Public Funds involving the amount of P300.00, each of them shall suffer an indeterminate penalty of from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional, as minimum, to SIX (6) YEARS and ONE (1) DAY of prision mayor, as maximum, and to indemnify jointly and severally the Barangay of Manapao, Minalabac, Camarines Sur, the amount of P300.00 representing the amount malversed and not restituted;

"3. Criminal Case No. 2137, for Malversation of Public Funds involving the amount of P500.00, each of the two accused is hereby sentenced to suffer an indeterminate penalty of from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional, as minimum, to SIX (6) YEARS and ONE (1) DAY of prision mayor, as maximum, and to indemnify jointly and severally the Barangay of Manapao, Minalabac, Camarines Sur, the amount of P500.00 which is the amount embezzled and not restituted;

"4. In Criminal Case No. 2138, for Malversation of Public Funds involving the amount of P1,897.00, each of the two accused is hereby sentenced to suffer an indeterminate penalty of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as minimum, to SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision mayor, as maximum, and to indemnify jointly and severally the Barangay of Manapao, Minalabac, Camarines Sur, the sum of P1,891.00 which is the amount malversed and not restituted; and

"5. With accessory penalties provided by law.

"The accused are entitled to full credit of the preventive imprisonment they have undergone, if any, in accordance with Art. 29, as amended by Republic Act No. 6127, of the Revised Penal Code.

"With costs against the two accused in all cases.

"SO ORDERED." (pp. 10-11, Rollo)

Petitioners filed separate motions for reconsideration which, however, were denied. Hence, the present petitions alleging that respondent Sandiganbayan committed reversible errors in convicting petitioners Peñaverde and Hermita of the crimes charged and presenting for resolution the following issues:

- (1) Whether or not serious doubts exist as to the probability of the commission of the offenses imputed to herein petitioners.
- (2) Whether or not there is conspiracy between petitioner Peñaflor Peñaverde and his co-accused Melecio C. Hermita to commit the offenses.

Anent the first issue, petitioners contend that Peñaflor V. Peñaverde, as Barangay Captain of Manapao, Minalabac, Camarines Sur, is not an accountable officer; that the BIDA funds in the amount of P5,000.00 to which Barangay Manapao is entitled was not entrusted to his custody but to the custody and control of Provincial Development Officer Adolfo Badiola, who issued the checks for the purchase of construction materials and for the cost of labor; and that since Badiola is the accountable officer and not petitioner Peñaverde, he (Peñaverde) cannot therefore be guilty of the crime of malversation of public funds. Further, they argue that assuming, without admitting, that there was malversation of public funds, the taking of the amount from the P5,000.00 in three (3) different occasions constitutes one (1) crime only.

In his comment to instant petitions the Solicitor General admits that petitioners may not be convicted of malversation because they were not accountable officers. Adolfo Badiola, the Provincial Development Officer, admitted that he has been the accountable officer for the BIDA funds.

"Q Do I understand Mr. Badiola that you were the one who issued these Exhibits A and A-1, these checks?

A Yes sir.

Q You were the one who issued these checks because you were the one in charge of disbursing this amount of P5,000.00 BIDA funds in your capacity as Provincial Development Officer?

A Yes, sir.

Q And you are the accountable officer insofar as that fund is concerned?

A Yes, sir. (tsn. p. 28, May 14, 1981)

However, the Solicitor General alleged that in Criminal Cases Nos. 2136 and 2138 petitioners conspired to induce Rito Sultan, the owner of the Sulu Hardware which was granted the award for materials, to part with the remaining balance of P4,500.00, in the amount of P300.00 and P1,897.00, on two (2) different occasions on the pretext that the said amount was for the repair of the school. After receiving the balance, they misappropriated it. Thus, they were properly charged in two separate informations of Malversation of Public Funds, although they were only guilty of Estafa, a lesser offense (Delfin vs. Court of Appeals, 13 SCRA 366).

Again, in Criminal Case No. 2137, petitioners conspired to induce Municipal Development Officer Filomeno Olaño to give them a check for P500.00, the amount allegedly awarded for labor, by misrepresenting through a picture that the footpath project was already completed. They eventually encashed the check and misappropriated it, for the third occasion, to the damage of the government.

With respect to the allegation that there was error on the part of respondent Sandiganbayan in concluding that petitioners conspired in the commission of the offense, suffice it to say that the basis of its finding was the credibility of witnesses. Pursuant to Section 7 of Presidential Decree No. 1606, in relation to Section 2, Rule 45 of the Rules of Court, the findings of fact of the Sandiganbayan are entitled to great respect and only questions of laws may be raised to the Supreme Court. Besides, well settled is the rule that the findings of trial court on credibility of witnesses will not be disturbed unless such findings overlook certain facts of substance and value which, if considered, might affect results of case.

In Criminal Cases Nos. 2136, 2137 and 2138, We find that the crimes committed by the herein petitioners are estafa, not malversation as charged in the information.

WHEREFORE, the conviction of petitioners by respondent Sandiganbayan in Criminal Case No. 2135 is hereby **AFFIRMED**. However, in Criminal Cases Nos. 2136, 2137 and 2138, petitioners Peñaflor Peñaverde and Melecio C. Hermita are guilty of estafa and each is sentenced as follows:

1. In Criminal Case No. 2136 - one (1) month and one (1) day of arresto mayor, as minimum, to one (1) year and one (1) day of prision correccional, as maximum;
2. In Criminal Case No. 2137 - one (1) month and one (1) day of arresto mayor, as minimum, to one (1) year and one (1) day of prision correccional, as maximum; and
3. In Criminal Case No. 2138 - one (1) month and one (1) day of arresto mayor, as minimum, to one (1) year and one (1) day of prision correccional, as maximum.

SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Makasiar, J., no part.

Abad Santos and De Castro, JJ., on leave.

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