

DR. INOCENCIO PEÑANUEVA, JR., PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 98000-02. June 30, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court and Section 7, Par. 3, of P.D. No. 1606, of the decision of the Sandiganbayan, finding petitioner guilty of the crimes of malversation (Art. 217, Revised Penal Code) in Criminal Cases Nos. 12238, 12239 and 12240.

In Criminal Case No. 12238, petitioner was accused of malversation of public property, specified as follows:

"That on or about April 19, 1985, in the municipality of Hinatuan, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Dr. Inocencio V. Peñanueva, Jr., being then Chief of Hospital, Hinatuan District Hospital of the same municipality and province and, as such accountable for public funds and property collected and received by reason of his position, and with grave abuse of confidence, did then and there wilfully, unlawfully and feloniously misappropriate, take, misapply, embezzle and convert to his own personal use and benefit various medicines amounting to P5,502.95, Philippine Currency, in the form of Vale (Good for) from the Hospital Supply and Stocks Room, to the damage and prejudice of the government entity in the amount aforesated."

"Contrary to law. (In violation of Article 217 of the Revised Penal Code)" (Rollo, pp. 39-40).

In Criminal Cases Nos. 12239 and 12240, petitioner was accused of malversation of public property valued at P9,525.30 out of the various medicines delivered by Zuellig Pharma Corporation committed on or about July 27, 1985 and P10,620.00 "in the form of vale (Good for)" committed on or about August 18, 1985, respectively.

Together with these criminal cases for malversation, petitioner was also charged before the Sandiganbayan in Criminal Case No. 12314 with violation of Section 3(e) of R.A. 3019 (the Anti-Graft and Corrupt Practices Act).

At his arraignment, petitioner entered a plea of "not guilty" to each of the informations filed against him. After a joint trial, the Sandiganbayan acquitted petitioner of the crime charged in Criminal Case No. 12314 but found him guilty of malversation of public property charged in Criminal Cases Nos. 12238 to 12240, with the mitigating circumstance of restitution, and imposed the corresponding penalties, as follows:

"(A) In Crim. Case No. 12238, the accused is sentenced to suffer the indeterminate penalty of imprisonment of 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, plus the penalty of perpetual disqualification, and to pay a fine of P5,502.95 in favor of the Government, without subsidiary imprisonment in case of insolvency. With costs against the accused.

(B) In Criminal Case No. 12239, the accused is sentenced to suffer the indeterminate penalty of imprisonment of SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum, to TEN (10) YEARS and ONE (1) DAY also of prision mayor, as maximum, plus the penalty of perpetual disqualification, and to pay a fine of

P9,525.30 in favor of the Government, without subsidiary imprisonment in case of insolvency. With costs against the accused.

(C) In Criminal Case No. 12240, the accused is sentenced to suffer the indeterminate penalty of imprisonment of SIX (6) YEARS and ONE (1) DAY of prision mayor, as minimum, to TEN (10) YEARS and ONE (1) DAY also of prision mayor, as maximum, plus the penalty of perpetual disqualification, and to pay a fine of P10,620.00 in favor of the Government without subsidiary imprisonment in case of insolvency. With costs against the accused" (Rollo, pp. 72-73).

In this appeal, petitioner claims that there is no evidence to support the charge in Criminal Case No. 12239 (Rollo, pp. 9-10). In said case, petitioner was charged with malversation of public property worth P9,525.30, taken from the medicines purchased from Zuellig Pharma Corporation (Rollo, p. 40).

There is ample evidence on record to support the charge in Criminal Case No. 12239. The prosecution presented therein Juanito Pagalan, the acting supply officer of the Hinatuan District Hospital. Pagalan testified that on July 27, 1985 he was directed by petitioner to get various drugs from the hospital stock. After delivering the drugs to petitioner, he filled up a "requisition and issue voucher" listing the drugs received by petitioner (Exh. O). He then asked petitioner to sign the voucher, which stated the respective prices of the drugs totalling P9,525.30. Pagalan also executed an affidavit, wherein he confirmed that on July 27, 1985, petitioner got from him the drugs valued at P9,525.30, which were among those medicines earlier delivered to the hospital by Zuellig Pharma Corporation (Rollo, p. 48).

In support of Pagalan's testimony, the prosecution presented Exhibit J, Zuellig Pharma Corporation Invoice No. 711747 dated March 23, 1985; Exhibit K, Zuellig Pharma Corporation Invoice No. 976365-A dated July 20, 1985; Exhibit L, Requisition and Issue Voucher dated July 27, 1985; Exhibit M, Zuellig Pharma Corporation Invoice No. 1151985 dated July 19, 1985; and Exhibit O, Requisition and Issue Voucher dated July 27, 1985.

With respect to Criminal Cases Nos. 12238 and 12240, petitioner claims that borrowing of medicines by the hospital staff and employees through the use of a "vale" receipt, has been an established practice in the Hinatuan Hospital as well as in other government hospitals (Rollo, pp. 11-12). He argues that the issuance of said form of receipt is an evidence of good faith and his promise to return or replace the medicine (Rollo, pp. 13-14).

The evidence on record does not support the claim of petitioner that the drawing of medicines through the "vale" method was an established practice in the hospital. When Nathaniel Majam, the Administrative Officer of the Hinatuan District Hospital, heard of petitioner's getting medicines from the hospital, he asked Audiepaz L. Daga-as, the hospital pharmacist, to explain why the vouchers signed by petitioner had the words "vale" or "good for." Daga-as answered that those words were placed on the vouchers on orders of petitioner. Majam told her right there and then that the withdrawal of medicines through such method was against hospital rules and regulations (Rollo, pp. 49-50).

It is not necessary to rule on the legality of the practice of non-accountable public officers drawing medicines from government stock through the issuance of "vale" receipts but certainly such practice cannot be tolerated with respect to similar drawings by accountable public officers. Otherwise, We render nugatory the penal laws on malversation and convert, through the simple expedient of issuing "vales", a criminal liability to a civil obligation.

Petitioner claims that he withdrew the drugs in order to have them replaced because their potency had either expired or were about to expire (Rollo, p.10). After hearing the evidence of the prosecution and the defense on the question of the potency of the drugs taken by petitioner, the Sandiganbayan rejected his claim (Rollo, p. 65).

We are in full accord with the Sandiganbayan when it made the following observations:

"x x x. If these medicines had already expired or were about to expire as claimed by the defense, this fact should have been indicated in the receipts that Dr. Peñanueva signed for his own protection. The fact that no mention was made about these medicines having already expired or about to expire leads to no other conclusion but that these medicines were still potent and valid at the time they were taken by Dr. Peñanueva. Besides, if these medicines have already expired or are about to expire, why should the receipts covering them which Dr. Peñanueva signed be made under a "good for" or "vale" arrangement? There is certainly no sense or reason for Dr. Peñanueva to burden himself and sign for medicines, under a "vale" arrangement, which have already expired. Moreover, if his intention really is to have the expired medicines in the hospital be replaced by new stocks, he could simply have directed the supply officer or the pharmacist to list down all the medicines in the stockroom or pharmacy that have expired or about to expire so that they can be replaced without himself specifying what medicines he shall take. All these observations thus militate against the claim of Dr. Peñanueva that the medicines that he took on these occasions separately referred to in the informations filed in these three cases are expired/or about to expire/medicines that need replacement" (Rollo, pp. 65-66).

The findings that the medicines taken by petitioner had not lost their potency and that petitioner withdrew the medicines for his own benefit, are findings of fact. These findings of fact, being supported by the evidence, cannot be disturbed (*Rodriguez v. Sandiganbayan*, 177 SCRA 220 [1989]).

Petitioner claims that when he took over the position of Chief of Hospital, he found a stock of expired medicines (Appellant's Brief, p. 31; Rollo, p. 36). It is a source of wonder why he did not also ask the drug companies to have these expired medicines replaced.

To prove that the drugs he withdrew from the hospital stock were replaced by the drug distributors, petitioner presented in evidence the certificates issued by different drug salesmen (Exhs. 5, 6, 7 and 8). The rebuttal evidence presented by the prosecution placed a doubt on the veracity of these certificates. The prosecution presented a certificate of the Branch Administrator of Zuellig Pharma Corporation (Exh. FF) attesting that "no expired or expiring stocks were returned to Zuellig Pharma Corporation by the Chief of Hospital or any staff of Hinatuan District Hospital for the period April 1985 to December 1985." The prosecution also presented a letter from the main office of Metro Drug Inc. (Exhibit GG) to the manager of its Butuan City office, directing him to investigate why a salesman of the branch office issued the certificate, Exhibit 6, when the company never replaced expired stocks but merely credited the customers accordingly.

The aforementioned certificates presented by the petitioner failed to bolster his defense. The certificates, Exhibits 7 and 8, were dated April 26, 1985 and August 5, 1985, respectively. If petitioner had possession of these certificates on the dates they purport to have been issued, why did he not submit them to the auditor immediately after the discovery of the missing medicines?

The certificates, Exhibits 7 and 8 merely stated that the drug companies had replaced certain drugs with a total value of P1,118.15 and P9,854.00, respectively, without specifying what brands of medicines were replaced.

While petitioner got P25,227.25 worth of drugs, the total value of the medicines allegedly replaced under the four certificates amounted to only P15,297.25.

Petitioner also claims that the charges against him were motivated by the desire of the hospital employees to oust him because of his strictness (Rollo, pp. 20--32). Assuming *arguendo* that his subordinates had "an ax to grind" against him, petitioner did not explain why the petition for his ouster (Exh. 1) also bore the signatures (using his own words) of "the members of the almost (sic) entire community of Hinatuan x x x" (Petition, p. 17; Rollo, p. 22).

At any rate, the Sandiganbayan anchored its verdicts of guilty on the bases of the evidence on record, not on the bare and unsubstantiated complaint for petitioner's ouster.

The prosecution has established (a) that petitioner obtained possession of public property in his capacity as chief of a government hospital; (b) that he could not account for and did not have said property in his possession when audited; and (c) that he could not give a satisfactory explanation or reasonable excuse for the disappearance of said property. Thus, all the elements of malversation under Article 217 of the Revised Penal Code are compresent (II Reyes, *The Revised Penal Code*, 1981 ed., p. 391).

The Sandiganbayan considered the replacement of some of the medicines by petitioner as a restitution. In malversation, the payment of the property malversed after the commission of the crime, does not extinguish the criminal liability (*People v. Miranda*, 2 SCRA 261 [1961]). The restitution was correctly appreciated as a mitigating circumstance (*Cimafranca, Jr. v. Sandiganbayan*, 194 SCRA 107 [1991]).

WHEREFORE, the decision appealed from is AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Melo, JJ., concur.

Padilla, J., on leave.

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