

**CLARO B. NARCISO, PETITIONER, VS. SANDIGANBAYAN, AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.***G.R. Nos. 98262-63. January 10, 1994*

Ponente: NARVASA, C.J.

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Petitioner Claro Narciso y Baldonado has appealed his conviction by the Sandiganbayan (Second Division) of the crime of malversation of public funds under Article 217 of the Revised Penal Code.

Narciso was assigned as Officer-in-Charge of the Municipal Treasurer's Office of Vallehermoso, Negros Oriental, and actually discharged the duties and functions of that office from May, 1982 to July 31, 1983 when he was returned to his original station at Manjuyod, Negros Oriental. During his stint at Vallehermoso, two (2) audit examinations were conducted at the Municipal Treasurer's Office. The first, in the middle part of May, 1983, was a regular audit; the second, on August 1, 1983, was done preparatory to the turnover of Narciso's accounts incident to his return to his original station at Manjuyod, Negros Oriental.

The first audit disclosed, among other things, a bank draft in the amount of P14,500.00 in the custody of Narciso and entered in his cashbook: BPI Family Bank Check numbered D127466 and dated May 16, 1983, which had been drawn by a certain Felicito Tan and delivered to the Municipality of Vallehermoso ostensibly in payment of real estate taxes. The check had not yet been deposited at that time. The first audit revealed no shortage in Narciso's accounts.

When subsequently remitted by Narciso to the Provincial Treasurer and deposited with the Dumaguete City Branch of the Philippine National Bank sometime in June, 1983, the check was dishonored because the signature thereon of the ostensible drawer (Felicito Tan) differed from his signature on file with his depository bank. On being notified, in about the third week of June, of the check's dishonor, Narciso made corresponding changes in his cashbook, to indicate the amount of the dishonored check, P14,500.00, as an "account receivable" (i.e., a debit entry) instead of a collected amount, as previously entered.

In view of said dishonor, when the second audit was held on August 1, 1983, the auditors declared Narciso to be short in his accounts in the sum of P14,500.00, "representing the amount of the dishonored check."

From these facts, not disputed by Narciso, two others were apparently deduced by the Government Auditors, namely: (1) that Narciso had had a hand in the making of the spurious check, and (2) that he had caused delivery of the spurious check to the Municipality to prevent discovery of a shortage in his accounts in the sum of P14,500.00. Accordingly, a letter treating of the matter (and one other item) was sent to Narciso reading as follows:[1]

"Mr. Claro B. Narciso

Acting Municipal Treasurer

Vallehermoso, Negros Oriental

Sir:

This is to inform you that in the examination of your cash and accounts as Acting Municipal Treasurer of Vallehermoso, this province, we found that your cash is short of P21,000.00. The shortage was arrived at as follows:

1) BPI Check No. D127466 dated May 16, 1983 issued allegedly for realty tax payment but was dishonored by the bank in the amount of P14,500.00 ----- P14,500.00

2) The cash Advance of Mayor Woodrow E. Serion which you granted him in September, 1982 and still remained unliquidated up to the time of examination, August 1, 1983 ----- P6,500.00

Total P21,000.00

In view of the above findings, demand is made of you to produce immediately the missing fund above-stated and to explain in writing why no criminal prosecution be taken against you for infidelity in the custody of government funds.

Very truly yours,

EUSEBIO D. KHO

Auditing Examiner III."

On August 11, 1983, a fact-finding inquiry relative to the aforementioned BPI Check No. 127466 was conducted at the Provincial Auditor's Office. In that investigation, a land tax collector in the Office of the Municipal Treasurer of Vallehermoso, Lolito Sedicta, gave a statement declaring, among others, that he gave the 14,500-peso check to Narciso in compliance with the latter's order to produce the said amount "because there was an audit" (Exhibit G). On the other hand, Narciso stated that he received the check from Sedicta as part of the latter's real estate tax collections (Exhibit "F").

For some reason, no charges were brought against Narciso until some four (4) years later; on May 7, 1987, formal administrative proceedings were initiated against him for "Dishonesty and/or Neglect of Duty." The proceedings resulted two years later in a judgment of the Department of Finance dated November 23, 1989 dismissing Narciso from the service.[2]

Now, during the pendency of this administrative case, two (2) informations, one for Falsification of Public and/or Official Documents and the other for Malversation of Public Funds, were filed before the Sandiganbayan against Narciso, on March 3, 1989 and September 11, 1989, docketed as Criminal Cases Numbered 13435 and 13864, respectively. The informations read as follows:[3]

(Malversation of Public Funds [Crim. Case No. 13435]):

"That on or about August 1, 1983, and for sometime prior thereto, in Vallehermoso, Negros Oriental, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Officer-in-Charge, Office of the Municipal Treasurer of the aforesaid municipality, and as such is responsible and accountable for the funds collected and received by him, by reason of his official position, with grave abuse of confidence, did then and there wilfully, unlawfully and feloniously, misappropriate, misapply, embezzle and take away from said funds the sum of Fourteen Thousand Five Hundred (P14,500.00) Pesos,

Philippine Currency, which he previously appropriated and converted to his personal use and benefit, and in order to cover up the shortage and/or malversation in the same aforesaid amount, he made it appear that, one Felicito Tan of San Carlos City (Negros Oriental) purportedly issued BPI Family Bank Check No. D127466 dated May 16, 1983 in the amount of P14,500.00 as payment for real estate taxes, but which check was dishonored by the PNB Dumaguete City Branch sometime in June 1983, for the reason that, the signature of Felicito Tan on the check differed from the signature on file with his depository bank and that accused resorted to the above scheme to cover-up his shortage or the malversation committed by him, to the damage and prejudice of the Government in the aforesaid amount of P14,500.00 -- said offense having been committed by the accused in relation to the discharge of his official duties.

CONTRARY TO LAW."

Falsification of Public and/or Official Document [Crim. Case No. 13864]):

"That on or about the month of May 1983, or sometime subsequent thereto in the Municipality of Vallehermoso, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the Officer-in-Charge, Office of the Municipal Treasurer of the aforesaid municipality, taking advantage of his public and official position and committing the acts complained of in the course of the discharge of his official and administrative functions, did then and there wilfully, unlawfully and feloniously make it appear in his official cashbook, a public and official document, that his office received from a certain Felicito Tan of San Carlos City, Negros Oriental, a BPI Family Bank Check No. D127466 dated May 16, 1983 in the amount of P14,500.00 as payment for real estate taxes when in truth and in fact as the accused well knew, said check was not issued by Felicito Tan because the latter had no real properties in Vallehermoso, Negros Oriental and therefore, had no reason to pay said municipality any real estate taxes, thereby making untruthful statements in a narration of facts and causing it to appear in said official cashbook that Felicito Tan paid real estate taxes when in fact he did not do so, such falsities having been resorted to by the accused as a scheme to conceal or cover-up his shortage in his accounts as an accountable officer of such municipality when he was initially audited by a team of examiners from the Commission on Audit subsequently.

CONTRARY TO LAW."

Arraigned on September 15, 1989, Narciso, assisted by counsel de parte, pleaded "Not Guilty" to both charges.

A joint trial of the two cases was ordered and commenced on March 28, 1990. The prosecution rested its case on September 25, 1990, after presenting the testimonies of Auditor Kho and Atty. Proceso Remullo, Jr., as well as documentary exhibits.[4] The defense, on the other hand rested its case after the presentation of the testimony of accused Narciso and documentary evidence.[5]

It is significant that neither in the presentation of its evidence-in-chief nor in rebuttal, did the prosecution present the testimony of Lolito Sedicta, land tax collector, who had declared at the administrative investigation before the Provincial Auditor a few years earlier, that he had given the P14,500.00-check to Narciso on the latter's instruction, "because there was an audit." [6] It appears that Sedicta had since gone into hiding, evidently because there are fifty-nine (59) criminal charges for falsification of public documents against him (a fact of which the Sandiganbayan took judicial notice). Equally noteworthy is that another vital witness, Felicito Tan, the alleged drawer of the check in question, was not presented either to substantiate the Government theory that he (Tan) had really issued the check upon Sedicta's request, so that Narciso might show it to the auditors during a shortage, or to indicate whether said check had been stolen and Tan's signature thereon falsified.[7]

On February 21, 1991, the Sandiganbayan (Second Division) promulgated a joint decision on the two cases.[8] In Criminal Case No. 13864, for Falsification of Public and/or Official Document, Narciso was acquitted "for failure

of the prosecution to prove (his) guilt beyond reasonable doubt." However, in Criminal Case No. 13435, for Malversation of Public Funds, Narciso drew a conviction. The dispositive portion of that adverse decision reads:[9]

"(1) In Criminal Case No. 13435, accused Claro Narciso y Baldonado is hereby found guilty beyond reasonable doubt as principal in the offense of Malversation of Public Funds, as defined and penalized under Article 217, par. 4 of the Revised Penal Code, and there being no modifying circumstance in attendance, after applying the benefits of the Indeterminate Sentence Law, he is hereby sentenced to suffer the indeterminate penalty of ELEVEN (11) YEARS, SIX (6) MONTHS and TWENTY-ONE (21) DAYS of prision mayor as the minimum, to SIXTEEN (16) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of reclusion temporal as the maximum, to further suffer perpetual special disqualification; to pay a fine of P14,500.00 corresponding to the amount malversed; to indemnify the Government of the Republic of the Philippines in the same amount of P14,500.00, and to pay the costs of said action."

Having failed in his bid for the reconsideration of the aforesaid decision, Narciso has come to this Court for relief alleging that:[10]

"1. RESPONDENT SANDIGANBAYAN ERRED GRAVELY, ON QUESTIONS OF LAW, BECAUSE IT INSISTED ON APPLYING THE RULE ON PRESUMPTION OF MALVERSATION UNDER THE LAST PARAGRAPH OF ARTICLE 217 OF THE REVISED PENAL CODE EVEN WHEN THERE IS NO EVIDENCE TO PROVE THAT THE ACCUSED WAS IN CUSTODY OF THE P14,500 ALLEGEDLY MALVERSED.

2. RESPONDENT SANDIGANBAYAN ERRED GRAVELY, ON QUESTIONS OF LAW, IN GROSSLY MISINTERPRETING THE IMPORT OF NARCISO'S ACTS CONTEMPORANEOUS TO THE ALLEGED MALVERSATIONS, WHICH ACTS MAY, AT THE MOST, SHOW NEGLIGENCE ON THE PART OF THE NARCISO, BUT CERTAINLY NOT GUILT."

The theory of the prosecution, sustained by the Sandiganbayan, is that Narciso misappropriated public funds in his custody, fabricated the payment of a check, and entered it in his cashbook as part of his collections in order to cover-up such shortage or malversation in the amount of P14,500.00. The Solicitor General sums up the prosecutions's "cover-up" theory, thus:

"What evidently emerges in this case is a masterstroke to outwit the Government. To cover the missing fund of P14,500.00, a check of P14,500.00 was utilized as a smokescreen. ***."[11]

The Sandiganbayan's decision likewise focuses on the "cover-up" angle, holding that:

"A careful scrutiny of the accused's testimony regarding the circumstances under which he claimed having received the check in question from Sedicta (sic) would indicate that, indeed, said check has been utilized to cover up a shortage in his accounts. ***."[12]

Narciso maintains, however, that there is no evidence to prove that he had incurred a cash shortage in the amount of P14,500.00, in the first place. He underscores the fact that what he received was not cash in said amount but a check which subsequently bounced, hence there could have been no misappropriation on his part, and therefore nothing to cover up. He asserts that the check had been given to him by Lolito Sedicta, a land tax collector in his office, as part of the latter's collections.

The crucial issue then, is whether or not Narciso had indeed incurred a shortage in his accounts as a public officer, which he had attempted to conceal through the false check.

After a careful scrutiny of the pleadings and the evidence, testimonial and documentary, this Court is persuaded that Narciso's acquittal must be decreed.

Narciso's testimony, as already earlier mentioned, is that the check in question was delivered to him by Lolito Sedicta, a land tax collector in the Office of the Municipal Treasurer of Vallehermoso. According to Narciso, he initially declined to consider the check as part of the tax collections of Sedicta in view of the latter's failure to indicate the corresponding official receipt number for the tax payment and to affix his initials on the dorsal portion of the check, as required by relevant rules; that he returned the check to Sedicta, calling his attention to said omissions;^[13] that after several days, Sedicta gave the check back to Narciso, this time with the notation, "PAYMENT FOR TAXES," and with Sedicta's initials written on the dorsal portion of the check;^[14] that having no opportunity to reflect on the matter, being then occupied with the regular audit going on at the time, Narciso received back the check in the belief that Sedicta had sufficiently complied with the standard procedure was sufficient; that in fact, the check was presented to the auditor at that time, who allowed it;^[15] and that a few days after the completion of that regular audit, he caused the check to be deposited at the PNB Branch in Dumaguete City, but it was dishonored, in view of which he had perforce to make the necessary entries in the cashbook reflect the amount of the dishonored check (P14,500.00) as a receivable.^[16]

Narciso's testimony stands un rebutted. It could have been confuted by Lolito Sedicta, the land tax collector who gave the check to Narciso, and Felicito Tan, the supposed owner and drawer of the check. But neither of these two persons was ever called to the stand by the prosecution, despite the latter's undertaking to do so.

There is thus nothing in the record furnishing any reasonable cause to disbelieve Narciso's story. The inconsistent extrajudicial statement of Lolito Sedicta (Exh. G) given during the administrative investigation,^[17] cannot be appreciated as evidence belying and negating Narciso's narrative, it being in the circumstances palpably hearsay, Sedicta never having taken the witness stand (and having in fact absconded).

Neither is there anything on record furnishing any reasonable ground to believe Narciso had anything to do with the preparation of the allegedly spurious check in the sum of P14,500.00 and its delivery to him as payment of real estate taxes of the maker, Felicito Tan. This is precisely made clear by the Sandiganbayan itself when it adjudged Narciso guiltless of the charge of falsification of the check in question. It observed that "there is a gap in the prosecution's evidence on these points - whether Tan really issued the check upon Sedicta's instance, apparently to be given to the accused to be shown to the auditors during the May audit and conceal a shortage in said amount or whether said check was really stolen and Tan's signature thereon was really falsified and, lastly, whether or not said check was really issued in payment of any tax obligation to the municipality of Vallehermoso. Only Tan could have cleared up these points. Unfortunately, Tan was never presented as a witness, nor was any statement from him and which would have assisted in the clarification of these issues. Consequently, the degree of moral certainty required to justify conviction for this particular offense is sorely wanting and accused's acquittal thereof must have to be adjudged."^[18] In truth, the Sandiganbayan continued, "if any falsification had really been effected, it should be Sedicta who should be answerable for it."^[19] Sedicta, it will be recalled, is the land tax officer who had delivered the check to Narciso and who, as already mentioned, has since disappeared evidently in view of the numerous charges of falsification pending against him.^[20]

Because Narciso had nothing to do with the issuance of the check by Felicito Tan (or someone using his check and name), as the Sandiganbayan itself declares, it was not logically defensible for that Tribunal to conclude that the check was precisely intended and used by Narciso to "cover up" a shortage in the funds in his custody in the amount of P14,500.00. Prescinding from this unassailable proposition of logic, and equally as telling, is that there is no evidence at all of any such shortage of funds. There is no evidence whatever that over and above the funds found by the auditors in his actual possession, Narciso had received the additional amount of P14,500.00, which he could no longer produce or account for at the time of the audit. There being no shortage, there has been no taking, appropriation, conversion, or loss of public funds; there is no malversation. It makes no sense for any

bogus check to be produced to "cover up" an inexistent malversation.

To repeat, the only facts established by the evidence against Narciso is that he received a check in the sum of P14,500.00 supposedly given in payment of real estate taxes, which check was subsequently dishonored because disclosed to be spurious. It is not however logically possible to derive from these circumstances, without more, a conclusion that Narciso had earlier pocketed an amount of P14,500.00 from the funds in his official custody and, to prevent discovery, had caused the issuance of the bad check and its acceptance as payment for taxes.

WHEREFORE, judgment of the tribunal a quo (Second Division) of February 21, 1991 is REVERSED and SET ASIDE, and the petitioner CLARO B. NARCISO, ACQUITTED of the charge of malversation of public funds under Article 217 of the Revised Penal Code.

IT IS SO ORDERED.

Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quason, Puno, and Vitug, JJ., concur.

Nocon, J., on leave.

[1] Rollo, p. 50. The same auditor who wrote the letter, Kho, also sent a Memorandum to the Provincial Auditor, dated August 10, 1983, explaining the basis of his finding of a shortage in Narciso's accounts.

[2] Sandiganbayan Rollo of Case No. 13435, pp. 148-150

[3] Rollo, pp. 36-37

[4] A to O, with submarkings

[5] Exhibits 1 to 4, with submarkings.

[6] SEE last paragraph, page 2, ending at page 3, *supra*; SEE footnotes 17 to 19, *infra*

[7] SEE footnote 18, *infra*

[8] Written for the Division by Justice Romeo M. Escareal, Chairman, and concurred in by Justices Jose S. Balajadia and Nathanael M. Grospe

[9] Rollo, p. 28

[10] *Id.*, p. 40 (Petition, p. 6)

[11] *Id.*, p. 138

[12] *Id.*, p. 20 (Sandiganbayan Decision, p. 16)

[13] TSN, September 26, 1990, p. 4

[14] *Id.*, p. 5

[15] *Id.*, p. 7

[16] *Id.*, p. 12

[17] See footnote 6, *supra*

[18] *Id.*, pp. 27-28; italics supplied

[19] Id., p. 27

[20] SEE footnotes 6 and 7

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