

## EN BANC

**[ G.R. NO. 172274, November 16, 2006 ]**

**ROMEO D. CABARLO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This petition for review under Rule 45 of the Rules of Court assails the April 28, 2005 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR No. 24719, affirming the Decision dated July 26, 2000 of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19, in Criminal Case No. 2488 finding petitioner guilty beyond reasonable doubt of the crime of Malversation of Public Funds under paragraphs 1(4) and 2, Article 217 of the Revised Penal Code. Also assailed is the March 23, 2006 Resolution<sup>[2]</sup> denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

The Commission on Audit (COA) conducted a comprehensive audit of the accounts of petitioner Romeo D. Cabarlo, then Deputy Provincial and Municipal Treasurer of Isulan, Sultan Kudarat. After reconciliation of the accounting and cash records, the audit team discovered a shortage of P3,201,200.00 in the General Fund and P1,106,000.00 in the Cash Fund. The audit also revealed that P800,000.00 from the Special Education Fund (SEF) was transferred to the General Fund without approval of the local school board.

When required to explain the shortages, petitioner sought assistance from the Provincial Treasurer of Sultan Kudarat who, after an examination of petitioner's Cash Book, found no shortage therein.

Subsequently, the Office of the Ombudsman issued a resolution finding *prima facie* evidence of malversation of public funds, for which petitioner was charged before the trial court. For violation of Section 3(e) of Republic Act (R.A.) No. 3019 (1960)<sup>[3]</sup> for the anomalous transfer and disbursement of the SEF, petitioner, together with the Municipal Mayor and Provincial Auditor, was charged before the Sandiganbayan. The Information for malversation of public funds reads:

That on or about 24 July 1995, and for sometime prior and subsequent thereto, in the Municipality of Isulan, Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the accused Romeo D. Cabarlo, a low ranking public officer, he being then the Municipal Treasurer of Isulan, Sultan Kudarat, and as such is accountable for all the funds collected and received by him by virtue of his position, while in the performance of his official functions, and committing the offense in relation to his office, did then and there, willfully, unlawfully, feloniously

and with grave abuse of confidence, take away, misappropriate and embezzle from the said funds the sum of Four Million Three Hundred Seven Thousand Two Hundred Pesos (P4,307,200.00), convert and appropriate the same to his own personal use and benefit, to the damage and prejudice of the government in the said sum of P4,307,200.00.

CONTRARY TO LAW.<sup>[4]</sup>

After trial, petitioner was convicted as follows:

WHEREFORE, upon all the foregoing consideration, the Court finds the accused, Municipal Treasurer Romeo D. Cabarlo of Isulan, Sultan Kudarat, guilty beyond reasonable doubt of the crime of MALVERSATION OF PUBLIC FUNDS, as defined and penalized under paragraph 1, subparagraph (4) and paragraph 2 of Article 217 of the Revised Penal Code.

Accordingly, with the application of the Indeterminate Sentence Law, the Court hereby sentences the accused, Romeo D. Cabarlo, to suffer the indeterminate penalty of imprisonment, ranging from TWELVE (12) YEARS, FIVE (5) MONTHS AND ELEVEN (11) DAYS of reclusion temporal, as minimum, to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY, of reclusion temporal, as maximum; to suffer perpetual special disqualification; to pay a fine of FOUR MILLION THREE HUNDRED SEVEN THOUSAND TWO HUNDRED PESOS (P4,307,200.00); to indemnify the government in the amount of FOUR MILLION THREE HUNDRED SEVEN THOUSAND TWO HUNDRED PESOS (P4,307,200.00); and to pay the costs.

IT IS SO ORDERED.<sup>[5]</sup>

Petitioner filed an appeal with the Court of Appeals but on April 28, 2005, the appellate court issued the assailed Decision affirming the trial court. It also denied petitioner's motion for reconsideration in its March 23, 2006 Resolution, hence, this petition, raising the following errors:

- I. THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER HAS APPROPRIATED, TAKEN OR MISAPPROPRIATED THE SUM OF P4,307,200.00 FROM THE FUNDS COLLECTED AND RECEIVED BY HIM WHILE IN THE PERFORMANCE OF HIS OFFICIAL FUNCTIONS.
- II. THE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR NEW TRIAL OF THE ACCUSED TO ALLOW HIM TO SUBMIT DOCUMENTS AND VOUCHERS WHICH PROVE LIQUIDATION OF CASH ADVANCES AND RECONCILIATION OF THE FINDINGS OF THE STATE AUDITORS.<sup>[6]</sup>

Petitioner argues that he is not guilty of malversation because he could prove the alleged shortage through supporting vouchers or paid-up cash items showing that the amount covering the shortage had been spent for public purposes. He also claims that the non-presentation of the vouchers during trial was caused by excusable neglect thus, his motion for new trial based on newly discovered evidence should have been allowed.

On the other hand, respondent People of the Philippines, through the Office of the

Solicitor General, asserts that the Provincial Treasurer's internal audit is incomplete because it was based only on petitioner's cash book, whereas the COA not only considered petitioner's books but also reconciled the same with the accounting and related records of the municipal accountant, including the schedule of collections and disbursements. Respondent claims that petitioner failed to overcome the presumption that he misappropriated the subject funds despite opportunities to rebut the same and that petitioner was not entitled to a new trial because the vouchers sought to be presented were not newly discovered evidence.

The petition lacks merit.

Conviction of malversation of public funds or property under Article 217 of the Revised Penal Code requires proof that (a) the offender is a public officer; (b) he has the custody or control of funds or property by reason of the duties of his office; (c) the funds or property involved are public funds or property for which he is accountable; and (d) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of such funds or property.<sup>[7]</sup>

Petitioner, as Deputy Provincial and Municipal Treasurer of Isulan, Sultan Kudarat, is a public officer tasked with the custody of funds and property. His duties include giving advise to local government and national officials regarding disposition of local government funds, and on such other matters relative to public finance; taking custody of and exercising proper management of the funds of the local government unit concerned; and taking charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority.<sup>[8]</sup> The funds involved in the instant case are public funds, to wit, General Fund, Cash Fund and Special Education Fund, for which petitioner is accountable. Thus, what remains to be resolved is whether petitioner has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of such funds or property.

Pursuant to Article 217 of the Revised Penal Code, the failure of the petitioner to have duly forthcoming such public funds or property upon demand, is prima facie evidence that he has put such missing funds to personal use. Being an accountable officer, petitioner may be convicted of malversation even in the absence of direct proof of misappropriation so long as there is evidence of shortage in his accounts which he is unable to explain.<sup>[9]</sup>

In the instant case, it is undisputed that there was a shortage in the funds amounting to P4,307,200.00. Petitioner who has custody over the funds failed to produce the amount upon demand by the State Auditor or to satisfactorily explain the shortage. Thus, he is presumed to have appropriated such missing funds to personal uses.

Petitioner failed to rebut the presumption that the missing funds were put to his personal uses. On the contrary and as correctly observed by the Court of Appeals, petitioner admitted his accountability for the missing funds by signing the Report of Cash Examination (General Form No. 74 [A]) certifying the shortage amounting to P4,307,200.00.<sup>[10]</sup> Petitioner presented no proof that the missing funds were spent

for public purposes. He relied only on the findings of the Office of the Provincial Treasurer's Office that there is no such shortage. However, as correctly pointed out by the respondent, such reliance is misplaced because "it is the COA which has the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government or any of its subdivisions, agencies or instrumentalities" as ordained by the Constitution. "While it is the Office of the Provincial Treasurer which has direct control over petitioner, the COA is not deprived of its power and authority to examine and audit accounts which petitioner holds in trust for the Municipality of Isulan, Sultan Kudarat."<sup>[11]</sup>

Thus, we agree with the ruling of the Court of Appeals to wit:

In effect, accused-appellant admitted both his accountability and liability. Indeed, from the time of the audit team's demand up to the conclusion of the trial in the court *a quo*, he was unable to present any document or proof to explain the alleged shortages. To the mind of the Court, accused-appellant's failure to satisfactorily explain why he incurred shortages proved that, indeed, he misappropriated or appropriated for his own use funds for which he was legally accountable.

Accused-appellant's insistence that the cash examination of the Office of the Provincial Treasurer showing that he did not incur any shortage is misplaced. In the first place, the internal audit conducted by the Office of the Provincial Treasurer was based only on his Cash Book whereas, the audit done by COA was based on his Cash Book and the Ledger Book of the Municipal Accountant to determine, if not to reconcile whether there was a balance in both books. In the second place, the internal audit covered a different period from that of the audit conducted by COA. Lastly, said internal audit was not binding as it is only the Commission on Audit which has the power, authority and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies or instrumentalities, pursuant to Section 2(1), Article IX(D) of the 1987 Constitution.<sup>[12]</sup>

The trial court and the Court of Appeals correctly denied petitioner's motion for new trial on the ground of newly discovered evidence. Under the Rules of Court, the requisites for newly discovered evidence are: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.<sup>[13]</sup>

It should be emphasized that the applicant for new trial has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial. The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the proffered evidence is in fact a newly discovered evidence which could not have been discovered by due diligence. The question of whether evidence is newly discovered has two aspects: a temporal one, *i.e.*, when was the evidence discovered, and a predictive one, *i.e.*, when should