

## THIRD DIVISION

[ G.R. NO. 150129, April 06, 2005 ]

**NORMA A. ABDULLA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

Convicted by the Sandiganbayan<sup>[1]</sup> in its Crim. Case No. 23261 of the crime of illegal use of public funds defined and penalized under Article 220 of the Revised Penal Code, or more commonly known as **technical malversation**, appellant Norma A. Abdulla is now before this Court on petition for review under Rule 45.

Along with Nenita Aguil and Mahmud Darkis, appellant was charged under an Information which pertinently reads:

That on or about November, 1989 or sometime prior or subsequent thereto, in Jolo, Sulu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused: NORMA A. ABDULLA and NENITA P. AGUIL, both public officers, being then the President and cashier, respectively, of the Sulu State College, and as such by reason of their positions and duties are accountable for public funds under their administration, while in the performance of their functions, conspiring and confederating with MAHMUD I. DARKIS, also a public officer, being then the Administrative Officer V of the said school, did then and there willfully, unlawfully and feloniously, without lawful authority, apply for the payment of wages of casuals, the amount of FORTY THOUSAND PESOS (P40,000.00), Philippine Currency, which amount was appropriated for the payment of the salary differentials of secondary school teachers of the said school, to the damage and prejudice of public service.

CONTRARY TO LAW.

Appellant's co-accused, Nenita Aguil and Mahmud Darkis, were both acquitted. Only appellant was found guilty and sentenced by the Sandiganbayan in its decision<sup>[2]</sup> dated August 25, 2000 (promulgated on September 27, 2000), as follows:

WHEREFORE, premises considered, accused Mahmud Darkis and Nenita P. Aguil are hereby acquitted of the crime charged. The cash bond posted by each of the said accused for their provisional liberty are hereby ordered returned to each of them subject to the usual auditing and accounting procedures.

Accused Norma Abdulla is hereby convicted of the crime charged and is hereby meted a fine of three thousand pesos, pursuant to the second paragraph of Article 220 of the Revised Penal Code. She is further

imposed the penalty of temporary special disqualification for a period of six (6) years. She shall also pay the costs of the suit.

SO ORDERED.

Upon motion for reconsideration, the Sandiganbayan amended appellant's sentence by deleting the temporary special disqualification imposed upon her, thus:

Premises considered, the decision of this Court dated August 25, 2000, is hereby amended to the effect that the penalty of temporary special disqualification for six (6) years is hereby cancelled and set aside. Hence, the last paragraph of said decision shall read as follows:

Accused Abdulla is hereby convicted of the crime charged and is hereby meted a fine of three thousand pesos, pursuant to the second paragraph of Article 220 of the Revised Penal Code. She shall also pay the costs of the suit.

SO ORDERED.<sup>[3]</sup>

Still dissatisfied, appellant, now before this Court, persistently pleas innocence of the crime charged.

The record shows that the prosecution dispensed with the presentation of testimonial evidence and instead opted to mark in evidence the following exhibits:

| <u>EXHIBITS</u> | <u>DESCRIPTION</u>   |
|-----------------|--|
| "A"             | Audit Report which is denominated as Memorandum of Commission on Audit, Region IX, Zamboanga City, from the Office of the Special Audit Team, COA, dated May 8, 1992, consisting of nine (9) pages;  |
| "B"             | Certified Xerox copy of a letter from the Department of Budget and Management through Secretary Guillermo N. Carague to the President of the Sulu State College dated October 30, 1989;  |
| "C"             | Certified copy of the DBM Advice of Allotment for the Year 1989;   |
| "C-1"           | The entry appearing in Exhibit "C" which reads: "Purpose - release partial funding for the conversion of 34 Secondary School Teacher positions to Instructor I items; Fund Source - lump-sum appropriation authorized on page 370 of RA 6688 and the current savings under personal services;" |
| "D"             | Manifestation filed by accused Norma Abdulla herself dated November 24, 1997 consisting of   |

two (2) pages appearing on pages 225 to 226 of the record;

"E" Motion filed by the accused through Atty. Sandra Gopez dated February 9, 1998 found on pages 382-a and 382-b of the records of this case; and

"F" Prosecution's Opposition to the motion marked as Exhibit "E" dated February 11, 1998, consisting of three (3) pages, appearing in pages 383 to 385 of the record.<sup>[4]</sup>

Thereafter, the prosecution immediately made its Formal Offer of Evidence, and, with the admission thereof by the court, rested its case.

The defense proceeded to adduce its evidence by presenting four (4) witnesses, namely, accused Mahmud Darkis, who was the Administrative Officer of Sulu State College, Jolo, Sulu; accused Nenita Aguil, the Cashier of the same College; appellant Norma Abdulla herself, who was the College President; and Gerardo Concepcion, Jr., Director IV and Head of the Department of Budget and Management, Regional Office No. 9, Zamboanga City.

The undisputed facts, as found by the Sandiganbayan itself:

The evidence on record xxx show that the request for the conversion of thirty-four (34) secondary school teachers to Instructor I items of the Sulu State College, through its former president, accused Abdulla, was approved by the Department of Budget and Management (DBM); that consequent to the approval of the said request, was the allotment by the DBM of the partial funding for the purpose of paying the salary differentials of the said thirty-four (34) secondary school teachers in the amount of forty thousand pesos (P40,000.00) sourced from the "lump sum appropriation authorized on page 370 of R.A. 6688 [should be page 396 of RA 6688 (General Appropriations Act January 1 - December 31, 1989)] and the current savings under personal services of said school (Exhibits `B,' `C' and `C-1;' Exhibit `18,' pp. 32-35; tsn, hearing of September 22, 1998, pp. 6 to 25 and 26); that out of the thirty-four (34) secondary school teachers, only the six (6) teachers were entitled and paid salary differentials amounting to P8,370.00, as the twenty-eight (28) teachers, who were occupying Teacher III positions, were no longer entitled to salary differentials as they were already receiving the same salary rate as Instructor I (Exhibit `A,' p. 4, par. 1; Exhibits `1' to `6,' inclusive; Exhibit `14-A;' tsn, hearing of September 22, 1998, pp. 6 to 8; tsn, hearing of September 23, 1998, pp. 10-11); and that the amount of P31,516.16, taken from the remaining balance of the P40,000.00 allotment, was used to pay the terminal leave benefits of the six (6) casuals (Exhibits `D' and `E;' Exhibits `7' to `12,' inclusive; tsn, hearing of September 22, 1998, pp. 13 and 34; tsn, hearing of September 23, 1998, p. 13).

Accused Abdulla was able to sufficiently justify the payment of the salary differentials of only six (6), out of the thirty-four (34) teachers, when she

testified that out of the thirty-four (34) teachers, twenty-eight (28) were already holding the position of Secondary School Teacher III receiving the salary of Instructor I; and that the remaining six (6) were still holding Secondary Teacher II positions and therefore receiving a salary lower than that of Instructor I so they were paid salary differentials (tsn, hearing of September 23, 1998, pp. 8, 10 and 11). In fact, the notarized audit investigation report (Exhibit `A,' p. 4, 1st par.) and the Joint Resolution of the Office of the Ombudsman, Mindanao (Exhibit `14-a'), also point that said act of the accused is justified.

In this recourse, appellant questions the judgment of conviction rendered against her, claiming that the Sandiganbayan erred:

"I

XXX ON A QUESTION OF LAW IN INVOKING THE PRESUMPTION OF UNLAWFUL INTENT DESPITE EVIDENCE TO THE CONTRARY.

II

XXX ON A QUESTION OF LAW IN HOLDING THAT THE PROSECUTION WAS ABLE TO PROVE THAT PETITIONER COMMITTED TECHNICAL MALVERSATION UNDER ARTICLE 220 OF THE REVISED PENAL CODE".

The Court grants the appeal.

So precious to her is the constitutional right of presumption of innocence unless proven otherwise that appellant came all the way to this Court despite the fact that the sentence imposed upon her by the Sandiganbayan was merely a fine of three thousand pesos, with no imprisonment at all. And recognizing the primacy of the right, this Court, where doubt exists, has invariably resolved it in favor of an accused.

In a judgment of acquittal in favor of two (2) accused charged of murder in *People vs. Abujan*,<sup>[5]</sup> the Court wrote:

We are enraged by the shocking death suffered by the victim and we commiserate with her family. But with seeds of doubt planted in our minds by unexplained circumstances in this case, we are unable to accept the lower court's conclusion to convict appellants. We cannot in conscience accept the prosecution's evidence here as sufficient proof required to convict appellants of murder. Hence, here we must reckon with a *dictum* of the law, *in dubilis reus est absolvendus*. All doubts must be resolved in favor of the accused. Nowhere is this rule more compelling than in a case involving the death penalty for a truly humanitarian Court would rather set ten guilty men free than send one innocent man to the death row. Perforce, we must declare both appellants not guilty and set them free.

Similarly, the Court had to acquit an accused charged of rape in *People vs. De Jesus*<sup>[6]</sup> on ground of reasonable doubt, to wit:

With seeds of doubt planted in our minds by the conduct of proceedings on record, we are unable to accept the lower court's conclusion to convict appellant. His conviction is founded on the sole testimony of Agnes, but though a credible witness despite her mental retardation, she showed unnecessary dependence on her mother when identifying the father of her child. Maternal coaching taints her testimony. That her mother had to be ordered by the judge to go outside the courtroom impresses us as significant. We are unable to accept as sufficient the quantum of proof required to convict appellant of rape based on the alleged victim's sole testimony. Hence, here we must fall back on a truism of the law, *in dubilis reus est absolvendus*. All doubts must be resolved in favor of the accused.

WHEREFORE, the assailed decision dated May 26, 2000, of the Regional Trial Court of Camiling, Tarlac, Branch 68, is REVERSED and SET ASIDE. Appellant RUBEN LUMIBAO is ACQUITTED of the charge of rape on reasonable doubt.

The Court's faithful adherence to the constitutional directive imposes upon it the imperative of closely scrutinizing the prosecution's evidence to assure itself that no innocent person is condemned and that conviction flows only from a moral certainty that guilt has been established by proof beyond reasonable doubt. In the words of *People vs. Pascua*<sup>[7]</sup>:

Our findings in the case at bar should not create the mistaken impression that the testimonies of the prosecution witnesses should always be looked at with askance. What we are driving at is that every accused is presumed innocent at the onset of an indictment. But, it has often happened that at the commencement of a trial, people's minds, sometimes judges too, would have already passed sentence against the accused. An allegation, or even any testimony, that an act was done should never be hastily accepted as proof that it was really done. Proof must be closely examined under the lens of a judicial microscope and only proof beyond reasonable doubt must be allowed to convict. Here, that quantum of proof has not been satisfied.

We shall now assay appellant's guilt or innocence in the light of the foregoing crucibles.

In her first assigned error, appellant contends that the prosecution failed to adduce evidence to prove criminal intent on her part. When she raised this issue in her Motion for Reconsideration before the Sandiganbayan, that court, invoking Section 5 (b), Rule 131 of the Rules of Court, ruled in a Resolution<sup>[8]</sup> promulgated on September 17, 2001, as follows:

Anent the allegation of the movant/accused that good faith is a valid defense in a prosecution for malversation as it would negate criminal intent on the part of the accused which the prosecution failed to prove, attention is invited to pertinent law and rulings of the Supreme Court on the matter.

Sec. 5(b) of the Rule 131, Rules of Court, provides, 'That an unlawful act was done with an unlawful intent.' Hence, *dolo* may be inferred from the