

SECOND DIVISION

[G.R. NO. 164481, September 20, 2005]

CONRADO C. DOLDOL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

Conformably to the Memorandum^[1] dated April 6, 1995 of the Provincial Auditor, a team of State Auditors led by State Auditor Emilie S. Ritua, with State Auditors Lydia Naoe and Beverly T. Cruz as members, conducted an audit of the cash and cash account of Conrado C. Doldol, the Municipal Treasurer of Urbiztondo, Pangasinan. The audit covered the General Fund, Special Education Fund and Trust Fund in his custody for the period of November 30, 1994 to June 8, 1995. Doldol and the Municipal Accountant were present during the audit. The State Auditors discovered that Doldol had a shortage of P801,933.26. They also noted that on June 5, 1995, he made cash withdrawals from the municipality's deposit account with the Land Bank of the Philippines (LBP) amounting to P360,000.59. The withdrawal, purportedly for salaries, wages, allowances and mid-year bonuses of municipal officers and employees, had not been recorded in the General Fund Cashbook as of June 8, 1995. The State Auditors also noted that Doldol made adjustments in the said cashbook on June 8, 1995, increasing his P801,933.26 shortage to P1,134,421.54. In a Letter^[2] dated July 5, 1995, the State Auditors demanded the immediate refund of the said amount, and for Doldol to submit within 72 hours a written explanation on the said shortage. Doldol failed to respond and was, thereafter, relieved of his duties. On July 20, 1995, he was directed to transfer the account to Assistant Municipal Treasurer Loida Cancino.

The State Auditors then conducted another audit of the said account, this time covering the period of June 8, 1995 to July 19, 1995. They discovered that Doldol incurred an added cash shortage of P149,905.92. In a Letter to Doldol dated July 27, 1995, the State Auditors demanded the immediate restitution of the missing fund, and directed him to submit within 72 hours a written explanation why he incurred such shortage. Again, Doldol failed to respond. The State Auditors submitted their Report to the Provincial Auditor on their examinations showing his shortages. On August 3, 1995, the State Auditors submitted their Memorandum on the result of the audits to the Provincial Auditor.

On the same day, Doldol wrote the Provincial Treasurer requesting that a re-audit be conducted on his cash and cash account, taking exception to the findings of the State Auditors.

Instead of pursuing his request for a re-audit, Doldol opted to refund the missing funds. On September 15, 1995, he remitted P200,000.00 to the Acting Municipal

Treasurer for which he was issued Official Receipt No. 436756. Doldol promised to pay the balance of his shortage, as follows: P200,000.00 on October 31, 1995, and P884,139.66 on or before November 30, 1995. However, he reneged on his promise.

On February 6, 1996, the Provincial Auditor transmitted the Memorandum and Consolidated Report of the State Auditors to the Ombudsman, and requested that Doldol be charged for malversation of public funds. Despite the extensions given to him, Doldol failed to file his counter-affidavit.

Two informations for malversation of public funds were then filed against Doldol in the Regional Trial Court (RTC) of San Carlos City. The first Information, docketed as Criminal Case No. SCC-2760, reads:

That on or about June 8, 1995, or sometime prior or subsequent thereto, in Urbiztondo, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, CONRADO C. DOLDOL, a public officer, being then the Municipal Treasurer, Municipality of Urbiztondo, Pangasinan, and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation of his office and taking advantage of the same, did then and there wilfully, unlawfully and feloniously, use and benefit the amount of ONE MILLION ONE HUNDRED THIRTY-FOUR THOUSAND FOUR HUNDRED TWENTY-ONE PESOS and 54/100 (P1,134,421.54) from such public funds received by him by reason of his office, to the damage of the government in the amount aforestated.

CONTRARY TO LAW.^[3]

The second Information, docketed as Criminal Case No. SCC-2763, reads:

That sometime between June 8, 1995 and July 19, 1995 or sometime prior or subsequent thereto, in Urbiztondo, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, CONRADO C. DOLDOL, a public officer, being then the Municipal Treasurer, Municipality of Urbiztondo, Pangasinan, and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation of his office and taking advantage of the same, did then and there wilfully, unlawfully and feloniously, take, misappropriate and convert to his personal use and benefit the amount of ONE HUNDRED FORTY-NINE THOUSAND NINE HUNDRED FIVE PESOS and 92/100 (P149,905.92) from such public funds received by him by reason of his office, to the damage of the government in the amount aforestated.

CONTRARY TO LAW.^[4]

Doldol testified that the funds which the State Auditors found missing were, in fact, cash advances availed of by the municipal employees. He insisted that not a single centavo was used for his personal benefit. He averred that the charges lodged against him were premature because the same were based on an incomplete audit.

In a Joint Decision, the trial court convicted the accused of the crimes charged. The *fallo* of the decision reads:

WHEREFORE, premises considered, the accused Conrado Doldol is hereby found guilty beyond reasonable doubt of the crime of Malversation of Public Funds in Criminal Case No. SCC-2760 and in Criminal Case No. SCC-2763, as defined and penalized by Art. 217 of the Revised Penal Code. In both cases, the amount involved is more than P22,000.00, as such the penalty to be imposed is *reclusion temporal* in its maximum period to *reclusion perpetua*. Considering that the accused surrendered to the police in Urbiztondo, Pangasinan (See Exh. 4) and being entitled to the provision of [the] Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate penalty of 10 years, 1 day of *prision mayor* as minimum to 18 years, 8 months of *reclusion temporal* as maximum in each of the two cases. Further, he is ordered to pay the amount of P1,134,421.54 in Criminal Case No. SCC-2760 and another amount of P149,905.92 in Criminal Case No. SCC-2763 minus, of course, his advance payment of P200,187.80. In addition, he should be made to suffer the accessory penalties corresponding to the principal penalty imposed upon him which includes perpetual absolute disqualification (Art. 41, Rev. Penal Code) and to pay the costs.

SO ORDERED.^[5]

On appeal to the Court of Appeals (CA), Doldol alleged:

1. That the trial court erred in rejecting the defenses put up by the accused as follows:
 - a. The evidence shows that the audits were not yet completed when the letters of demand were served upon him to produce the alleged missing funds.
 - b. He was not given the chance to further verify the records despite his request to that effect.
 - c. There is no evidence that he took the money from the vault or brought it home.
 - d. The missing funds, if any, were cash advances of certain municipal employees.
 - e. His having borrowed money from the bank negates the charge of misappropriation of public funds.
2. That the trial court erred in convicting the accused based on the testimonies of the auditors and the documentary evidence adduced by them.
3. That the trial court erred in sentencing the accused to suffer the penalties imposed by the assailed joint decision.^[6]

On February 11, 2001, the CA rendered judgment affirming the appealed decision, and, likewise, denied Doldol's motion for reconsideration thereof.

Doldol, now the petitioner, forthwith filed the present petition for review on *certiorari*, faulting the CA as follows:

1. In affirming the joint decision of the Regional Trial Court, Branch 56, San Carlos City, Pangasinan in Crim. Case Nos. SCC-2760 and SCC-2763;
2. In convicting the accused-petitioner on the basis of an erroneous and incomplete audit;
3. In not dismissing the cases against the accused-petitioner.^[7]

The petitioner reiterates his arguments that the audit of his accountabilities had not been completed because the State Auditors had yet to conduct a verification of their initial findings based on the cashbook and a reconciliation of the bank deposits of the municipality. The petitioner insists that the State Auditors did not submit any bank reconciliation statement. The petitioner argues that he was never given a chance to explain and point out that he did not incur any shortage of public funds, and that the charges against him should be dismissed. To bolster his claim, he cites the ruling of this Court in *Dumagat v. Sandiganbayan*^[8] and Section 560 of the Manual of Instructions to Treasurers and Auditors and other Guidelines to bolster his claim.

The petitioner asserts that the prosecution failed to prove that the public funds were for his personal use. In fact, the petitioner insists, the evidence shows that the alleged missing funds were unliquidated cash advances of employees. Hence, the petitioner concludes, the *prima facie* presumption under the last paragraph of Article 217 of the Revised Penal Code does not apply.

In its comment on the petition, the Office of the Solicitor General (OSG) asserts that the issues raised by the petitioner are factual and, under Rule 45 of the Rules of Court, only questions of law may be raised. The OSG posits that the findings of facts of the trial court, as affirmed by the CA, are conclusive on this Court, absent a showing that the trial court ignored, misconstrued or misunderstood cogent facts and circumstances which, if considered, would change the outcome of the case. The OSG maintains that the prosecution adduced proof beyond reasonable doubt that the petitioner malversed the public funds subject of the two Informations. Moreover, the petitioner's contention that the charges against him were premature, because the audit of his accountabilities had not yet been completed and he was not given a chance to explain the whereabouts of the subject funds before the said charges were filed, is belied by the fact that he even made a partial restitution of the public funds. The OSG notes that as found by the trial court, the petitioner even failed to specify the names of the employees who were granted cash advances and the accounts of the said advances. It further avers that the ruling of this Court in *Dumagat v. Sandiganbayan*^[9] does not apply because:

In his vain attempt to exculpate himself from criminal liability, petitioner invokes the doctrine established in *Dumagat vs. Sandiganbayan, et al.*, [211 SCRA 171, 177 (1992)], wherein this Honorable Court acquitted the accused of the crime of malversation of public funds, holding that "[s]ince the audit examination left much to be desired in terms of thoroughness and completeness as there were accounts which were not