

THIRD DIVISION

[G.R. No. 158413, February 08, 2012]

CELSO M. MANUEL, EVANGELISTA A. MERU, FLORANTE A. MIANO, AND PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. HON. SANDIGANBAYAN (FOURTH DIVISION), MELCHOR M. MALLARE AND ELIZABETH GOSUDAN, RESPONDENTS.

[G.R. NO. 161133]

MELCHOR M. MALLARE AND ELIZABETH GOSUDAN, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

These consolidated petitions question an interlocutory order of the Sandiganbayan as well as its decision and resolution in Criminal Case No. 25673 for malversation of public funds, entitled *People of the Philippines v. Melchor M. Mallare and Elizabeth M. Gosudan*.

In the earlier petition, G.R. No. 158413, the petitioners, Celso M. Manuel, Evangelista A. Meru and Florante A. Miano (*petitioners*), question the May 20, 2002 Resolution^[1] of the Sandiganbayan granting the Motion to Re-open Proceedings filed by the accused after their conviction in the September 17, 2001 Decision^[2] of the said tribunal.

In G.R. No. 161133, the petitioners are the accused assailing the (1) September 17, 2001 Decision of the Sandiganbayan finding them guilty beyond reasonable doubt of the crime charged; (2) the July 21, 2003 Resolution^[3] affirming the conviction after reception of additional evidence in the re-opened proceedings; and (3) the November 13, 2003 Resolution^[4] denying their motion for reconsideration.

The Consolidated Facts on Record

On October 4, 1999, an Information^[5] was filed before the Sandiganbayan charging Melchor M. Mallare (*Mallare*) and Elizabeth M. Gosudan (*Gosudan*), Mayor and Treasurer, respectively, of the Municipality of Infanta, Pangasinan with the crime of Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code. The Information reads:

That on or about 17 August 1998, and for sometime prior thereto, in the Municipality of Infanta, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Melchor M. Mallare, being the Mayor of the said Municipality and a high

ranking official, and Elizabeth M. Gosudan, being the Treasurer of the said Municipality and an accountable officer of public funds of said municipality by reason of the duties of her office, while in the performance and taking advantage of their official and administrative functions, conspiring and confederating with or mutually helping each other, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously appropriate, take or misappropriate, or permit any other person to take wholly or partially, public funds in the custody of the accused Municipal Treasurer Gosudan amounting to PESOS: ONE MILLION FOUR HUNDRED EIGHTY SEVEN THOUSAND ONE HUNDRED SEVEN AND 40/100 (P1,487,107.40), when said accused disbursed, or authorized, allowed, consented or tolerated the disbursement, of public funds in the amounts of: (1) P995,686.09 for unlawful personal loans to several municipal officials and employees including themselves; (2) P291,421.31 for payments without the requisite appropriation; and (3) P200,000 for withdrawals recorded as cash disbursement, said disbursement being in violation of the Constitution, law, rules and regulation, to the damage and prejudice of the Government and public interest.

CONTRARY TO LAW.

The Information ascribed to Mallare and Gosudan (*accused*) the following acts of alleged unlawful disbursement, constituting the elements of the crime of Malversation of Public Funds, to wit: 1) P995,686.09 for unlawful personal loans to several municipal officials and employees including themselves; 2) P291,421.31 for payments without the requisite appropriation; and 3) P200,000.00 for withdrawals recorded as cash disbursements.

Upon being arraigned on January 4, 2000, the accused pleaded "Not Guilty." During the pre-trial, the parties stipulated and agreed: 1) that the accused were public officers; 2) that there was an audit report; 3) that there was restitution in the amount of P110,000.00; 4) that there was a written demand on the accused to pay the shortage; and 5) that the shortage was in the amount of P1,487,107.40.

The issues posed before the Sandiganbayan were the following:

(1) Whether or not accused Municipal Treasurer Elizabeth M. Gosudan committed the crime of Malversation of Public Funds when she granted personal loans to the municipal officials and employees, including herself and her co-accused Municipal Mayor Melchor M. Mallare, from the municipal funds, despite the fact that the full amount of said loan had been completely reimbursed or restituted at the exit conference.

(2) Whether or not accused Municipal Mayor Melchor M. Mallare has conspired with his co-accused Municipal Treasurer Gosudan in the commission of the crime of Malversation of Public Funds.

During the trial, the prosecution presented several documents and the lone testimony of Emelie S. Ritua, State Auditor II of the Commission on Audit (COA).

The defense, on the other hand, presented their own documents and Gosudan as its only witness.

On September 17, 2001, the Sandiganbayan rendered a decision finding Mallare and Gosudan guilty beyond reasonable doubt of the crime of Malversation of Public Funds. The dispositive portion of the decision reads:

WHEREFORE, the herein two (2) accused, MELCHOR M. MALLARE and ELIZABETH M. GOSUDAN, are hereby found GUILTY beyond reasonable doubt of the crime of MALVERSATION OF PUBLIC FUNDS, defined and penalized under the first paragraph, subparagraph 4, Article 217, Revised Penal Code, and each of them is sentenced under the Indeterminate Sentence Law to suffer the penalty of imprisonment of from Thirteen (13) Years and Four (4) Months, as minimum, to Nineteen (19) Years and Four (4) Months, as maximum, both of reclusion temporal, and also to suffer the penalty of perpetual special disqualification. Further, accused Melchor M. Mallare is hereby sentenced to pay a fine of P300,998.59, accused Elizabeth M. Gosudan to pay a fine of P774,285.78, and both to pay the costs.

SO ORDERED.^[6]

In reaching said determination, the Sandiganbayan gave the following reasons:

Going now to the essential elements of the crime of Malversation of Public Funds, the following facts must concur:

- (1) That the accused is a public officer;
- (2) That he/she had custody and/or control of funds by reason of his/her office;
- (3) That the funds involved were public funds for which he/she is accountable; and
- (4) That he/she appropriated or consented, or through abandonment or through negligence, permitted another person to take said public funds.

On the first element, as borne by the record of this case, and as specifically stipulated by the parties per the Pre-Trial Order, dated 7 February 2000, the accused Melchor M. Mallare and Elizabeth M. Gosudan are public officers at the time of the commission of the alleged offense, the former being the Municipal Mayor and the latter the Municipal Treasurer of Infanta, Pangasinan. On the second and third elements, as Municipal Treasurer, accused Gosudan had the duty to have custody and the obligation to exercise proper management of the municipal funds of Infanta, Pangasinan, and accused, Mallare, as the local chief executive, is

responsible for the supervision of all government funds and property pertaining to his agency, the Municipality of Infanta, Pangasinan.

Anent the fourth element, the record is replete with evidence showing that accused Treasurer Gosudan herself admitted that she gave the "missing" amount to several municipal officials and employees, as witness the following facts:

1. Per the testimony of COA Auditor Emelie S. Ritua on the witness stand, when she and her audit team told the Treasurer "to produce immediately the missing funds and to explain why the shortage have [had] occurred x x x [s]he told [them] that she [could]not produce immediately a part of the shortage because they were loaned out to some of the officials and employees;" and that [s]he presented to them an informal list of the officials and employees who were granted IOUs or 'vales'" or "pautang."

2. The fact of the accused Treasurer having given the subject amounts to the municipal officials and employees named in the "unofficial list" is not denied by her, as the lone witness for the prosecution, she and her counsel merely insisting that the amounts were not given as loans but as "vales" or "pautang."

3. The confirmation letters prepared by COA Auditor Ritua wherein the persons named in the accused Treasurer's "informal list" of borrowers acknowledged by their signatures at the bottom thereof that they have "outstanding loan balance from her," further prove beyond reasonable doubt that said accused Treasurer loaned out to said persons amounts from the municipal funds.

4. The insistence of accused Treasurer Gosudan that the subject amounts that she gave to the aforementioned persons, including herself and the accused Mayor, were not "loans" but were "vales" "pautang," "salary advances" "cash advances," "travel expenses," "gasoline expenses" and/or "funds used for purchase of spare parts of municipal vehicle" – is belied by her own admission that the amounts of these "vales" were not covered by the required vouchers (with supporting papers) signed by accused Municipal Mayor Mallare and were not entered in the cash book because they were "not an official cash advance," and she could no longer remember what particular amount is for which specific purpose.

5. The foregoing naked claims and admissions of accused Treasurer Gosudan lead Us to the inevitable conclusion that the amounts she gave to the municipal officials and employees, including herself and her co-accused Mayor Mallare, were nothing but personal loans taken from the cash account of the Municipality of Infanta, Pangasinan.

6. As already stated earlier, the full amount of the "shortages" found by the COA audit team (which constitute the subject personal loans, as already determined) was fully restituted (according to COA Auditor Ritua) or reimbursed (according to accused Gosudan), as shown in Official Receipts all issued in the name of accused Gosudan.^[7]

The Sandiganbayan further stated that Gosudan's acts of allowing other persons to borrow municipal funds constituted solid proof of malversation. In the case of Mallare, his act of getting or accepting the subject loan for himself in the amount of ₱300,998.59 from Gosudan amounted to a conspiracy with the latter in the commission of the crime of malversation. The full restitution of the total amount of the loaned public funds did not exonerate Mallare and Gosudan because the crime of Malversation of Public Funds was already consummated upon the latter's granting of the loans, and upon the former's acceptance and taking of the amounts lent to him. Restitution of the loaned amounts could only mitigate their civil liabilities, not exonerate them from criminal liability. The pertinent portions of the Sandiganbayan Decision read as follows:

The foregoing discussion leads us to the inevitable conclusion that accused Municipal Treasurer Gosudan committed the crime of Malversation of Public Funds when she extended loans or cash advances to herself and several of her co-employees including her co-accused Mayor Mallare, in the total amount of ₱774,285.78.

On the part of accused Municipal Mayor Melchor M. Mallare, it is true that not an iota of evidence was introduced to show that he conspired with accused Treasurer Gosudan in giving loans to all the municipal officials and employees named in the confirmation letters, other than that to himself. Hence, he cannot be faulted for the grant of said loans by his co-accused municipal treasurer. However, his act of getting or accepting the loan for himself in the amount of ₱300,998.59 from accused Treasurer Gosudan, as acknowledged by him in the confirmation letter that he signed, is a concrete proof of his having conspired with her in the commission of the crime of Malversation of Public Funds in the said amount.

The full restitution of the total amount of the loaned public funds does not exonerate the herein two accused, because the crime of Malversation of Public Funds was consummated upon accused Treasurer Gosudan's granting of the loans, and upon accused Mayor Mallare's acceptance and taking of the amount thus loaned to him. The restitution of the loaned amounts thereafter will not exonerate said accused, and can merely mitigate their civil liabilities which, however, they have fully settled when the whole amount of the loan was restituted.^[8]

Insisting on their innocence, Mallare and Gosudan filed a motion for reconsideration^[9] but it was denied in a resolution^[10] dated November 16, 2001.