

THIRD DIVISION

[G.R. No. 192330, November 14, 2012]

ARNOLD JAMES M. YSIDORO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

ABAD, J.:

This case is about a municipal mayor charged with illegal diversion of food intended for those suffering from malnutrition to the beneficiaries of reconstruction projects affecting the homes of victims of calamities.

The Facts and the Case

The Office of the Ombudsman for the Visayas accused Arnold James M. Ysidoro before the Sandiganbayan in Criminal Case 28228 of violation of illegal use of public property (technical malversation) under Article 220 of the Revised Penal Code.^[1]

The facts show that the Municipal Social Welfare and Development Office (MSWDO) of Leyte, Leyte, operated a Core Shelter Assistance Program (CSAP) that provided construction materials to indigent calamity victims with which to rebuild their homes. The beneficiaries provided the labor needed for construction.

On June 15, 2001 when construction for calamity victims in *Sitio Luy-a, Barangay Tinugtogan*, was 70% done, the beneficiaries stopped reporting for work for the reason that they had to find food for their families. This worried Lolita Garcia (Garcia), the CSAP Officer-in-Charge, for such construction stoppage could result in the loss of construction materials particularly the cement. Thus, she sought the help of Cristina Polinio (Polinio), an officer of the MSWDO in charge of the municipality's Supplemental Feeding Program (SFP) that rationed food to malnourished children. Polinio told Garcia that the SFP still had sacks of rice and boxes of sardines in its storeroom. And since she had already distributed food to the mother volunteers, what remained could be given to the CSAP beneficiaries.

Garcia and Polinio went to petitioner Arnold James M. Ysidoro, the Leyte Municipal Mayor, to seek his approval. After explaining the situation to him, Ysidoro approved the release and signed the withdrawal slip for four sacks of rice and two boxes of sardines worth P3,396.00 to CSAP.^[2] Mayor Ysidoro instructed Garcia and Polinio, however, to consult the accounting department regarding the matter. On being consulted, Eldelissa Elises, the supervising clerk of the Municipal Accountant's Office, signed the withdrawal slip based on her view that it was an emergency situation justifying the release of the goods. Subsequently, CSAP delivered those goods to its beneficiaries. Afterwards, Garcia reported the matter to the MSWDO and to the municipal auditor as per auditing rules.

On August 27, 2001 Alfredo Doller, former member of the Sangguniang Bayan of Leyte, filed the present complaint against Ysidoro. Nierna Doller, Alfredo's wife and former MSWDO head, testified that the subject SFP goods were intended for its target beneficiaries, Leyte's malnourished children. She also pointed out that the Supplemental Feeding Implementation Guidelines for Local Government Units governed the distribution of SFP goods.^[3] Thus, Ysidoro committed technical malversation when he approved the distribution of SFP goods to the CSAP beneficiaries.

In his defense, Ysidoro claims that the diversion of the subject goods to a project also meant for the poor of the municipality was valid since they came from the savings of the SFP and the Calamity Fund. Ysidoro also claims good faith, believing that the municipality's poor CSAP beneficiaries were also in urgent need of food. Furthermore, Ysidoro pointed out that the COA Municipal Auditor conducted a comprehensive audit of their municipality in 2001 and found nothing irregular in its transactions.

On February 8, 2010 the Sandiganbayan found Ysidoro guilty beyond reasonable doubt of technical malversation. But, since his action caused no damage or embarrassment to public service, it only fined him P1,698.00 or 50% of the sum misapplied. The Sandiganbayan held that Ysidoro applied public property to a public purpose other than that for which it has been appropriated by law or ordinance. On May 12, 2010 the Sandiganbayan denied Ysidoro's motion for reconsideration. On June 8, 2010 Ysidoro appealed the Sandiganbayan Decision to this Court.

The Questions Presented

In essence, Ysidoro questions the Sandiganbayan's finding that he committed technical malversation. He particularly raises the following questions:

1. Whether or not he approved the diversion of the subject goods to a public purpose different from their originally intended purpose;
2. Whether or not the goods he approved for diversion were in the nature of savings that could be used to augment the other authorized expenditures of the municipality;
3. Whether or not his failure to present the municipal auditor can be taken against him; and
4. Whether or not good faith is a valid defense for technical malversation.

The Court's Rulings

One. The crime of technical malversation as penalized under Article 220 of the Revised Penal Code^[4] has three elements: a) that the offender is an accountable public officer; b) that he applies public funds or property under his administration to some public use; and c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance.^[5] Ysidoro claims that he could not be held liable for the offense under its third element because the four sacks of rice and two boxes of sardines he

gave the CSAP beneficiaries were not appropriated by law or ordinance for a specific purpose.

But the evidence shows that on November 8, 2000 the Sangguniang Bayan of Leyte enacted Resolution 00-133 appropriating the annual general fund for 2001.^[6] This appropriation was based on the executive budget^[7] which allocated P100,000.00 for the SFP and P113,957.64 for the Comprehensive and Integrated Delivery of Social Services^[8] which covers the CSAP housing projects.^[9] The creation of the two items shows the Sanggunian's intention to appropriate separate funds for SFP and the CSAP in the annual budget.

Since the municipality bought the subject goods using SFP funds, then those goods should be used for SFP's needs, observing the rules prescribed for identifying the qualified beneficiaries of its feeding programs. The target clientele of the SFP according to its manual^[10] are: 1) the moderately and severely underweight pre-school children aged 36 months to 72 months; and 2) the families of six members whose total monthly income is P3,675.00 and below.^[11] This rule provides assurance that the SFP would cater only to the malnourished among its people who are in urgent need of the government's limited resources.

Ysidoro disregarded the guidelines when he approved the distribution of the goods to those providing free labor for the rebuilding of their own homes. This is technical malversation. If Ysidoro could not legally distribute the construction materials appropriated for the CSAP housing beneficiaries to the SFP malnourished clients neither could he distribute the food intended for the latter to CSAP beneficiaries.

Two. Ysidoro claims that the subject goods already constituted savings of the SFP and that, therefore, the same could already be diverted to the CSAP beneficiaries. He relies on *Abdulla v. People*^[12] which states that funds classified as savings are not considered appropriated by law or ordinance and can be used for other public purposes. The Court cannot accept Ysidoro's argument.

The subject goods could not be regarded as savings. The SFP is a continuing program that ran throughout the year. Consequently, no one could say in mid-June 2001 that SFP had already finished its project, leaving funds or goods that it no longer needed. The fact that Polinio had already distributed the food items needed by the SFP beneficiaries for the second quarter of 2001 does not mean that the remaining food items in its storeroom constituted unneeded savings. Since the requirements of hungry mouths are hard to predict to the last sack of rice or can of sardines, the view that the subject goods were no longer needed for the remainder of the year was quite premature.

In any case, the Local Government Code provides that an ordinance has to be enacted to validly apply funds, already appropriated for a determined public purpose, to some other purpose. Thus:

SEC. 336. *Use of Appropriated Funds and Savings.* – Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief