

THIRD DIVISION

[G.R. No. 154042, April 11, 2011]

**JOSE T. TUBOLA, JR., PETITIONER, VS. SANDIGANBAYAN AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

CARPIO MORALES, J.:

Jose Tubola, Jr. (petitioner) appeals the December 7, 2000 Decision^[1] and June 10, 2002 Resolution of the Sandiganbayan in Criminal Case No. 12015 which found him guilty of Malversation of Public Funds penalized under Article 217 of the Revised Penal Code, committed as follows:

That within the period from June 25, 1982 up to November 8, 1982, and for sometime prior thereto, in Iloilo City, Philippines and within the jurisdiction of this Honorable Court, the said accused who was a duly appointed cashier/collecting officer of the National Irrigation System, Iloilo City and as such was an accountable public officer for public funds that were in his official custody by reason of his official position, did then and there, wilfully, unlawfully and feloniously, with grave abuse of confidence **misappropriate and convert to his own personal use and benefit** the amount of NINE THREE THOUSAND FIFTY ONE PESOS AND EIGHTY- EIGHT CENTAVOS P93,051.88 to the damage and prejudice of the government.

CONTRARY TO LAW.^[2] (emphasis and underscoring supplied)

Petitioner was the cashier of the National Irrigation Administration (NIA)-Aganan, Sta. Barbara River Irrigation System in Iloilo City. On November 8, 1982, Commission on Audit (COA) State Auditing Examiners Yvonne Gotera (Gotera) and Theresita Cajita (Cajita) conducted an audit examination of petitioner's account which indicated a shortage of P93,051.88.^[3]

Gotera and Cajita thus sent a letter of demand dated November 23, 1982 to petitioner directing him to account for the shortage.^[4] Petitioner refused to receive the letter, however, hence, Gotera and Cajita sent it by registered mail.^[5]

Petitioner was thereupon charged of committing malversation of public funds before the Sandiganbayan to which he pleaded "not guilty."^[6]

By the account of Gotera, the lone witness for the prosecution, petitioner had an account balance of **P30,162.46 prior to June 25, 1982**; that from June 25 to November 8, 1982, the date petitioner's account was audited, his cash collections

totaled **P347,995.64**; that his remittances from June 25 to November 8, 1982 totaled P285,105.41; and that the total collections less total remittances amounted to P93,051.88 as of November 8, 1982.^[7]

Still by Gotera's account, the audit team found in petitioner's drawer "vales/chits" or promissory notes or receivables signed by NIA employees involving the total amount of P79,044.51.^[8]

Petitioner, who claimed that he was assigned as cashier since 1978 and was also in charge of payment of salaries of more than 2,000 field employees in the NIA Jalaur Project, declared that his task of keeping the collected irrigation fees was temporarily assigned to Editha Valeria (Valeria) upon instruction of his superior, Regional Director Manuel Hicao,^[9] for he (petitioner) was also handling the payroll of around 2,000 employees.

Petitioner further declared that no accounting of the collected fees was undertaken since he trusted Valeria, who directly remitted them to the bank, after he signed the statement of collection without reading the contents thereof. ^[10]

Petitioner presented "vales" and "chits" involving the total amount of P115,661.66 representing loans extended by Valeria to certain NIA employees and even COA auditors.^[11] And he identified "chits" and "vales" dated 1975 to 1981 inclusive representing loans extended *prior* to the audit period.^[12]

By Decision of December 7, 2000,^[13] the Sandiganbayan convicted petitioner as charged, disposing as follows:

WHEREFORE, the guilt of the accused, JOSE TUBOLA, JR., having been proven beyond reasonable doubt, the Court hereby **CONVICTS** him of the crime of Malversation of Public Funds penalized under Article 217 of the Revised Penal Code. Appreciating in his favor the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, and applying the Indeterminate Sentence Law, the accused is hereby sentenced to suffer the indeterminate penalty of TEN (10) years and ONE (1) day of *Prision Mayor* as Minimum, to SEVENTEEN (17) years, FOUR (4) months of *Reclusion Temporal* as Maximum, and the accessory penalties provided for by law.

He is likewise ordered to **indemnify** the Republic of the Philippines the amount of Ninety Three Thousand Fifty One Pesos and Eighty Eight Centavos (P93,051.88); to pay a **fine** in the same amount, which is the amount of money malversed and the costs of suit, and finally to suffer perpetual disqualification to hold public office.

SO ORDERED.^[14] (Capitalization, italics and emphasis in the original)

His motion for reconsideration having been denied,^[15] petitioner lodged the present

appeal, imputing error on the Sandiganbayan for

I

. . . CONCLUD[ING] THAT [HE] FAILED TO REBUT THE PRESUMPTION UNDER ARTICLE 217 OF THE REVISED PENAL CODE . . .

II

. . . CONCLUDING THAT [HE] HAS COMMITTED INEXCUSABLE NEGLIGENCE IN DELEGATING THE CUSTODY OF THE ACCOUNT TO [AN]OTHER PERSON.

III

. . . RENDERING JUDGMENT OF CONVICTION NOTWITHSTANDING THE FACT THAT IT HAS BEEN CLEARLY ESTABLISHED THAT [HE] IS NOT AN ACTUAL AND POTENTIAL WRONGDOER.

IV

. . . VIOLAT[ING] [HIS] BASIC CONSTITUTIONAL RIGHT TO DUE PROCESS WHEN IT ACTIVELY TOOK PART IN THE QUESTIONING OF THE ACCUSED WHEN HE WAS PRESENTED AS A WITNESS.^[16]

To petitioner, the evidence adduced at the trial had overcome the legal presumption that he put the missing funds to his personal use. There is, he argues, "incontrovertible fact that [he] ha[d] not received any single centavo in the form of irrigation fees" since the collections were actually received by Valeria.^[17]

According to petitioner, he being the superior of Valeria, he had to rely on her honesty and competence in the performance of her duties. He cites *Arias v. Sandiganbayan*,^[18] which ruled that a head of office is not required to examine every single detail of any transaction from its inception until it is finally approved, to deem it no longer necessary for him to examine all the details each time a remittance of the fees was made.

Petitioner even posits that the Sandiganbayan was unsure whether he was guilty of malversation intentionally or through negligence.

In fine, petitioner insists that as the primary task of collecting the irrigation fees was the responsibility of Valeria, he cannot be faulted for negligence.^[19]

Further, petitioner posits that he was neither an actual or potential wrongdoer and, absent criminal intent, he should not be convicted with the full harshness of the law.^[20]

Finally, petitioner points out that his right to due process was violated, the Justices of the Sandiganbayan having actively participated in the criminal proceedings by

"tak[ing] into their own hands in proving the case against [him]."[21]

The People, through the Special Prosecutor, draws attention to the failure of petitioner to present Valeria to shed light on her actual duties, or to at least present a certification from then Regional Director Manuel Hicao, who allegedly ordered Valeria to take over from petitioner the duty of collecting irrigation fees. To the People, petitioner's self-serving testimony failed to controvert the legal presumption of misappropriation.[22]

The People goes on to contend that petitioner may still be convicted of malversation by negligence even if the Information alleged the commission of intentional malversation since the "dolo or culpa present in the offense is only a modality in the perpetration of the felony." [23]

Respecting the supposed violation of petitioner's right to due process in light of the alleged "active" participation of the Sandiganbayan Justices in questioning him during the hearing of the case, the People underscores that it is the duty of a trial judge to examine a witness "to secure a full and clear understanding of the facts or to test to his satisfaction the credibility of the witness..." [24]

Article 217 of the Revised Penal Code provides:

Art. 217. *Malversation of public funds or property. Presumption of malversation.* - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.
4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of

perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (italics in the original, emphasis and underscoring supplied)

The elements of malversation of public funds are thus:

1. that the offender is a public officer;
2. that he had the custody or control of funds or property by reason of the duties of his office;
3. that those funds or property were public funds or property for which he was accountable; and
4. that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.^[25]

All the above-mentioned elements are here present. Petitioner was a public officer^[26] ? he occupied the position of cashier at the NIA. By reason of his position, he was tasked to regularly handle irrigation fees, which are indubitably public funds pertaining to the NIA, and to remit them to the depositary bank.

As established by the prosecution, petitioner was the one who *remitted* irrigation fees collected from June 25, 1982 to October 31, 1983^[27] inclusive, so that even if the Court were to credit petitioner's allegation that Valeria had actually taken over his function of *collecting* the irrigation fees, the collections were still, in fact by *his admission*, turned over to him.

Q: How about the money after this payment for irrigation fees are entered in the Collection Book for which Ms. Edita Valeria is the one in charge, **who keeps the money being paid for irrigation fees?**

A: She is the one holding the money turned over to her by the farmers who paid their irrigation fees, sir. I am just reporting in my office every 7th, 15th.

PJ GARCHITORENA

Confine your answer to the question. Who keeps the irrigation fees being collected?

A: Edita Valeria, your Honor.

PJ GARCHITORENA

Q: Is that part of her functions?

WITNESS

A: No, your Honor.

Q: Whose function is it to keep the irrigation fees?