

THIRD DIVISION

[G.R. No. 164763, February 12, 2008]

**ZENON R. PEREZ, Petitioner, vs. PEOPLE OF THE PHILIPPINES
and SANDIGANBAYAN, Respondents.**

DECISION

REYES, R.T., J.:

PETITIONER Zenon R. Perez seeks a review^[1] of his conviction by the Sandiganbayan^[2] for malversation of public funds^[3] under Article 217 of the Revised Penal Code.

This is not a big case but its implications are wide-ranging and the issues We resolve include the rights to speedy trial and speedy disposition of a criminal case, the balancing test, due process, and cruel and unusual punishment.

The Facts

On December 28, 1988, an audit team headed by Auditor I Arlene R. Mandin, Provincial Auditor's Office, Bohol,^[4] conducted a cash examination on the account of petitioner, who was then the acting municipal treasurer of Tubigon, Bohol.

Petitioner was absent on the first scheduled audit at his office on December 28, 1988. A radio message was sent to Loon, the town where he resided, to apprise him of the on-going audit. The following day, the audit team counted the cash contained in the safe of petitioner in his presence. In the course of the audit, the amount of P21,331.79 was found in the safe of petitioner.

The audit team embodied their findings in the Report of Cash Examination,^[5] which also contained an inventory of cash items. Based on the said audit, petitioner was supposed to have on hand the total amount of P94,116.36, instead of the P21,331.79, incurring a shortage of P72,784.57.^[6]

The report also contained the Cash Production Notice^[7] dated January 4, 1989, where petitioner was informed and required to produce the amount of P72,784.57, and the cash count sheet signed and acknowledged by petitioner indicating the correctness of the amount of P21,331.79 found in his safe and counted in his presence. A separate demand letter^[8] dated January 4, 1989 requiring the production of the missing funds was sent and received by petitioner on January 5, 1989.

When asked by the auditing team as to the location of the missing funds, petitioner verbally explained that part of the money was used to pay for the loan of his late brother, another portion was spent for the food of his family, and the rest for his

medicine.^[9]

As a result of the audit, Arlene R. Mandin prepared a memorandum^[10] dated January 13, 1989 addressed to the Provincial Auditor of Bohol recommending the filing of the appropriate criminal case against petitioner.

On January 16, 1989, petitioner remitted to the Office of the Provincial Treasurer of Bohol the amounts of P10,000.00 and P15,000.00, respectively. On February 14, 1989, petitioner again remitted to the Provincial Treasurer an additional amount of P35,000.00, followed by remittances made on February 16, 1989 in the amounts of P2,000.00 and P2,784.00.

An administrative case was filed against petitioner on February 13, 1989. He filed an Answer^[11] dated February 22, 1989 reiterating his earlier verbal admission before the audit team.

On April 17, 1989, petitioner again remitted the amount of P8,000.00 to the Provincial Treasurer of Bohol. Petitioner had then fully restituted his shortage in the amount of P72,784.57. The full restitution of the missing money was confirmed and shown by the following receipts:^[12]

<u>Official Receipt No.</u>	<u>Date Issued and Received</u>	<u>Amount</u>
8266659	January 16, 1989	P10,000.00
8266660	January 16, 1989	P15,000.00
8266662	February 14, 1989	P35,000.00
8266667	February 16, 1989	P 2,000.00
8266668	February 16, 1989	P 2,784.00
8266675	April 17, 1989	P 8,000.00
		TOTAL -P72,784.57

Later, petitioner was charged before the Sandiganbayan with malversation of public funds, defined and penalized by Article 217 of the Revised Penal Code in an Information that read:

That on or about the period covering from December 28, 1988 to January 5, 1989, and for sometime prior thereto, in the Municipality of Tubigon, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Zenon R. Perez, a public officer being then Acting Municipal Treasury of the said Municipality, by reason of the duties of his official position was accountable for the public funds collected and received by him, with grave abuse of confidence did then and there willfully, unlawfully and feloniously misappropriate, misapply, embezzle and take away from the said funds the total amount of SEVENTY-TWO THOUSAND SEVEN HUNDRED EIGHTY-FOUR PESOS and 57/100 (P72,784.57), which said fund was appropriated and converted by the said accused to his own personal use and benefit to the damage and prejudice of the government in the aforementioned amount.

CONTRARY TO LAW.^[13] (Underscoring supplied)

On March 1, 1990, petitioner, duly assisted by counsel *de parte*, entered a plea of "not guilty."^[14]

Pre-trial was initially set on June 4-5, 1990 but petitioner's counsel moved for postponement. The Sandiganbayan, however, proceeded to hear the case on June 5, 1990, as previously scheduled, due to the presence of prosecution witness Arlene R. Mandin, who came all the way from Bohol.

On said date, the Sandiganbayan dispensed with pre-trial and allowed the prosecution to present its witness. Arlene R. Mandin testified as narrated above.

The defense presented evidence through petitioner Zenon R. Perez himself. He denied the contents of his first Answer^[15] to the administrative case filed against him by the audit team. He claimed it was prepared without the assistance of counsel and that at the time of its preparation and submission, he was not in peak mental and physical condition, having been stricken with diabetes mellitus.^[16]

He then revoked his Answer dated February 22, 1989 and filed his second Answer dated March 2, 1989.^[17] In the latter, he vehemently denied that he incurred a cash shortage P72,784.57.

According to petitioner, the alleged shortage was in the possession and custody of his accountable personnel at the time of the audit examination. Several amounts totalling P64,784.00 were remitted to him on separate dates by his accountable officer, starting January 16, 1989 to February 16, 1989. The same were turned over by him to the Office of the Provincial Treasurer, leaving an unremitted sum of P8,000.00 as of February 16, 1989.^[18] He remitted the P8,000.00 on April 17, 1989 to the Provincial Treasurer of Bohol, fully restoring the cash shortage.

Petitioner further testified that on July 30, 1989, he submitted his Position Paper^[19] before the Office of the Ombudsman, Cebu City and maintained that the alleged cash shortage was only due to oversight. Petitioner argued that the government did not suffer any damage or prejudice since the alleged cash shortage was actually deposited with the Office of the Provincial Treasurer as evidenced by official receipts.^[20]

Petitioner completed his testimony on September 20, 1990. He rested his case on October 20, 1990.^[21]

Sandiganbayan Disposition

On September 24, 2003, the Sandiganbayan rendered a judgment of conviction with a *fallo* reading:

WHEREFORE, judgment is hereby rendered finding the accused ZENON R. PEREZ, **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds as defined in and penalized by Article 217 of the Revised Penal Code and, there being one mitigating circumstance without any aggravating circumstance to offset the same, is hereby sentenced to suffer an indeterminate penalty of from TEN (10) YEARS and ONE (1) DAY of *prision mayor* as the minimum to FOURTEEN (14) YEARS and

EIGHT (8) MONTHS of *reclusion temporal* as the maximum and to suffer perpetual special disqualification. The accused Zenon R. Perez is likewise ordered to pay a FINE equal to the total amount of the funds malversed, which is Seventy-Two Thousand Seven Hundred Eighty-Four Pesos and Fifty-Seven Centavos (P72, 784.57).

SO ORDERED.^[22] (Emphasis in the original)

On January 13, 2004, petitioner filed a motion for reconsideration^[23] which the prosecution opposed on January 28, 2004.^[24] Petitioner replied^[25] to the opposition. On August 6, 2004, petitioner's motion was denied with finality.

On September 23, 2004, petitioner resorted to the instant appeal^[26] raising the following issues, to wit:

I. THE HON. SANDIGANBAYAN BY UNDULY AND UNREASONABLY DELAYING THE DECISION OF THE CASE FOR OVER THIRTEEN (13) YEARS VIOLATED THE PETITIONER'S RIGHT TO SPEEDY DISPOSITION OF HIS CASE AND DUE PROCESS.

II. THE LAW RELIED UPON IN CONVICTING THE PETITIONER AND THE SENTENCE IMPOSED IS CRUEL AND THEREFORE VIOLATES SECTION 19 OF ARTICLE III (BILL OF RIGHTS) OF THE CONSTITUTION.^[27] (Underscoring supplied)

Our Ruling

Before addressing petitioner's twin assignment of errors, We first tackle the propriety of petitioner's conviction for malversation of public funds.

I. Petitioner was correctly convicted of malversation.

Malversation is defined and penalized under Article 217 of the Revised Penal Code. The acts punished as malversation are: (1) *appropriating* public funds or property, (2) *taking or misappropriating* the same, (3) *consenting*, or through *abandonment or negligence, permitting* any other person to take such public funds or property, and (4) being *otherwise* guilty of the misappropriation or malversation of such funds or property.^[28]

There are four elements that must concur in order that one may be found guilty of the crime. They are:

- (a) That the offender be a public officer;
- (b) That he had the *custody or control* of funds or property by *reason of the duties of his office*;
- (c) That those funds or property involved were public funds or property *for which he is accountable*; and
- (d) That he has appropriated, took or misappropriated or consented or,

through abandonment or negligence, permitted another person to take them.^[29]

Evidently, the first three elements are present in the case at bar. At the time of the commission of the crime charged, petitioner was a public officer, being then the acting municipal treasurer of Tubigon, Bohol. By reason of his public office, he was accountable for the public funds under his custody or control.

The question then is whether or not petitioner has appropriated, took or misappropriated, or consented or through abandonment or negligence, permitted another person to take such funds.

We rule in the affirmative.

In malversation, all that is necessary to prove is that the defendant received in his possession public funds; that he could not account for them and did not have them in his possession; and that he could not give a reasonable excuse for its disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is shortage in his accounts which he has not been able to explain satisfactorily.^[30]

Verily, an accountable public officer may be found guilty of malversation even if there is no direct evidence of malversation because the law establishes a presumption that mere failure of an accountable officer to produce public funds which have come into his hands on demand by an officer duly authorized to examine his accounts is *prima facie* case of conversion.^[31]

Because of the *prima facie* presumption in Article 217, the burden of evidence is shifted to the accused to adequately explain the location of the funds or property under his custody or control in order to rebut the presumption that he has appropriated or misappropriated for himself the missing funds. Failing to do so, the accused may be convicted under the said provision.

However, the presumption is merely *prima facie* and a rebuttable one. The accountable officer may overcome the presumption by proof to the contrary. If he adduces evidence showing that, in fact, he has not put said funds or property to personal use, then that presumption is at end and the *prima facie* case is destroyed.^[32]

In the case at bar, petitioner was not able to present any credible evidence to rebut the presumption that he malversed the missing funds in his custody or control. What is extant in the records is that the prosecution, through witness Arlene R. Mandin, was able to prove that petitioner malversed the funds under his custody and control. As testified by Mandin:

Was Mr. Zenon Perez actually and physically present during the time of your cash examination?

Atty. Caballero:

Q: Was Mr. Zenon Perez actually and physically present during the time of your cash examination?