

FIRST DIVISION

[G.R. No. 140549, July 22, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOHN PETER
HIPOL, APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

Appellant John Peter Hipol was charged in Criminal Case No. 14716-R with Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, committed as follows:

That on or about during the period March 8, 1997, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public accountable officer and bonded officer assigned with the Office of the City Treasurer, Baguio City, and as such is accountable for public funds entrusted to and received by him, by reason of his position while in the performance of his official functions, taking advantage of his official functions, taking advantage of his official position, did then and there willfully, unlawfully and feloniously take away, misappropriate, embezzle, misapply and convert for his personal use and benefit the amount of TWO MILLION THREE HUNDRED NINETY THOUSAND THREE HUNDRED SEVENTY EIGHT PESOS & 57/100 (2,390,378.57), Philippine Currency, from such funds, thereby causing damage and prejudice to the government in the aforementioned amount.

CONTRARY TO LAW.^[1]

Accused-appellant pleaded "not guilty" on arraignment.^[2] Thereafter, trial ensued.

The facts may be summarized as follows:

On December 19, 1993, appellant was employed as Cash Clerk II at the City Treasurer's Office of Baguio City.^[3] He was assigned at the Cash Division, headed by the Cashier IV, Mrs. Nelia De Jesus. Appellant's duties included assisting the Cashier in the preparation of payments of vouchers, correspondences, daily cash reports and cash items reports, Journal of Checks issued by the Cashier, Cash Disbursement Reports, other communications and documents necessary in connection with the handling of cash, and the performance of any other duties that may be assigned to him by the City Treasurer, Assistant City Treasurer and by the Cashier.^[4] Appellant was likewise tasked to make almost daily deposits of the collections of the City Treasurer to the Philippine National Bank (PNB), Session Road Branch, Baguio City.^[5] Whenever appellant was absent, De Jesus would ask Lerma G. Roque, a Utility Worker at the Baguio City Treasurer's Office, to do the typing jobs and sometimes deposit money collected for the City accompanied by an officer from the City

Treasurer's Office.^[6]

On January 10, 1997, at 4:00 p.m., Roque was instructed by De Jesus to gather all deposit slips covering all deposits of funds of the City Treasurer's Office with PNB. As was her usual practice, Roque opened the unlocked desk drawer of appellant to get the deposit slips kept therein. Roque inadvertently stumbled upon three PNB deposit slips inside appellant's drawer which did not appear to have been actually deposited and received by the depositary bank. Two of the three bank slips were dated January 2, 1997 for P20,571.38,^[7] and P64,795.50,^[8] respectively, while the third slip was dated January 9, 1997 in the amount of P49,737.48,^[9] Sensing an irregularity, Roque showed said deposit slips to De Jesus, the Cashier IV, and Mrs. Rosita de Vera, the Acting Assistant Cashier.

Upon verification from her records, De Jesus confirmed that the amounts stated on the aforesaid three deposit slips indeed appeared on her ledgers of collection. On the other hand, the PNB, Session Road Branch, likewise confirmed to De Vera that the amounts corresponding to the aforesaid three deposit slips were not deposited to the city's account.^[10] When the desk drawers of appellant were further searched, Roque also unearthed other undeposited bank slips. Subsequently, the Commission on Audit of the City of Baguio conducted the corresponding audit of the books of the Treasurer's Office. The Initial Audit of Rosevida Lopez, City Auditor II, showed that the total amount of money collected but not deposited in the City's bank account was P1,097,063.44.^[11]

Further audit of the records of the City Treasurer's Office revealed that an additional amount of P1,293,315.10 was collected but not deposited. Thus, the total amount of money unaccounted for was Two Million Three Hundred Ninety Thousand Three Hundred Seventy-Eight Pesos and Fifty-Seven Centavos (P2,390,378.57).^[12]

Appellant vehemently denied the accusation against him, claiming that he does not know anything about the malversation of public funds.

On August 12, 1999 the Regional Trial Court of Baguio City, Branch 3, rendered a decision,^[13] the dispositive portion of which reads:

WHEREFORE, the Court finds accused JOHN PETER HIPOL y CAYAGO GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds, and he is hereby sentenced as follows:

1. To suffer the penalty of Imprisonment of Reclusion Perpetua at the National Penitentiary, Muntinlupa City;
2. To indemnify the Baguio City Government the total amount of Two Million Three Hundred Ninety Four Thousand Nine Hundred Sixty Pesos and Sixty Seven Centavos (P2,394,360.67) with legal interest;
3. To pay a Fine of P2,394,360.67 to the Republic of the Philippines, which amount of fine is equivalent to the malversed funds by the accused;

4. To suffer perpetual disqualification from holding any public office or position in the present and the future; and,
5. To pay costs of suit.

IT IS SO ORDERED.

Hence, the instant appeal, where appellant raised the following issues:

- I. WHETHER OR NOT THERE ARE PUBLIC FUNDS ALLEGEDLY MALVERSED.
- II. WHETHER OR NOT THE ACCUSED IS GUILTY OF THE CRIME OF MALVERSATION OF PUBLIC FUNDS CHARGED.
- III. WHETHER OR NOT THE PENALTY OF RECLUSION PERPETUA IMPOSED IS CORRECT CONSIDERING THAT THERE IS NO AGGRAVATING CIRCUMSTANCE.

At the outset, appellant calls our attention to the alleged procedural flaws which led to his prosecution and conviction. First, he claims that the warrantless search in his desk drawer by a co-employee and his warrantless arrest contravened his constitutional rights under the Bill of Rights.^[14] Secondly, appellant argues that the trial court erred when it admitted the amended Information which increased the amount allegedly malversed by him to P2,394,960.67, after he has already entered his plea to the original Information. He claims that the amendment was substantial and the admission of the same placed him in double jeopardy.^[15]

These contentions are untenable.

The Constitutional proscription enshrined in the Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State and its agents. The Bill of Rights only tempers governmental power and protects the individual against any aggression and unwarranted interference by any department of government and its agencies.^[16] Accordingly, it cannot be extended to the acts complained of in this case. The alleged "warrantless search" made by Roque, a co-employee of appellant at the treasurer's office, can hardly fall within the ambit of the constitutional proscription on unwarranted searches and seizures. The search was done pursuant to the usual practice of Roque whenever appellant was absent.

On the other hand, while it may be stated that appellant was taken into police custody without a valid warrant of arrest, such illegality was, however, deemed cured when appellant applied for bail,^[17] entered a plea of "not guilty" during his arraignment,^[18] and actively participated in the trial of his case.^[19] By so doing, appellant submitted himself to the jurisdiction of the trial court. In *People v. Lagarto*,^[20] it was held:

The argument has no merit. CORDERO voluntarily entered a plea of "not guilty" when he was arraigned on 22 August 1994. By so pleading, he submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest, **for the legality of an arrest affects only the**

jurisdiction of the court over his person. Besides, his act of entering a plea when arraigned amounted to a waiver of the right to question any irregularity in his arrest. It is too late for CORDERO to protest his arrest because a valid information had been filed against him, he was properly arraigned, trial commenced and was terminated, and a judgment of conviction had been rendered against him. Besides, his illegal arrest, if such was the fact, did not have any bearing on his liability since **an allegation of an invalid warrantless arrest cannot deprive the State of its right to prosecute the guilty when all the facts on record point to his culpability.** Any irregularity in his arrest will not negate the validity of his conviction duly proven beyond reasonable doubt by the prosecution.^[21]

Regarding the amendment of the Information, the same was amended to conform to what the evidence showed as the total amount of money undeposited and unaccounted for by appellant after the requisite audit examination was further conducted in the Treasurer's Office. The amendment stated with specificity something that was already charged in the Information, and which added nothing essential for convicting appellant for the crime charged. It did not involve a variance of the nature of the offense committed but only a change in the amount involved as the alleged converted public funds. It did not cause a change in the basic theory of the prosecution which would require the appellant to prepare his defense anew. Neither did it expose appellant to a charge that called for a higher penalty beyond that stated in the law. The defense available to appellant under the original Information as it originally stood was still available to him after it was amended.^[22] Hence, such amendment was only in form and not in substance, to which no double jeopardy can be said to have attached.

Conviction for malversation of public funds or property under Article 217 of the Revised Penal Code requires proof that (a) the offender is a public officer; (b) he has the custody or control of funds or property by reason of the duties of his office; (c) the funds or property involved are public funds or property for which he is accountable; and (d) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of such funds or property.^[23]

It is clear from the facts established in this case that appellant is a public officer^[24] occupying the Cash Clerk II position at the City Treasurer's Office. By reason of his position, appellant was tasked to regularly handle public funds every time he deposited the collections of the City Treasurer's Office to the city's depository bank. The fact that the obligation to deposit the collections of the City Treasurer's Office is not covered by appellant's official job description is of no legal consequence in a prosecution for Malversation. What is essential is that appellant had custody or control of public funds by reason of the duties of his office. He is an employee of, or in some way connected with, the government and, in the course of his employment, he receives money or property belonging to the government for which he is bound to account. Accordingly, what is controlling is the nature of the duties of appellant and not the name or relative importance of his office or employment.^[25]

In an attempt to pass accountability for the missing funds of the city, appellant points to the Notice of Charges^[26] dated January 14, 1997 and January 31, 1997,