

SECOND DIVISION

[G.R. No. 125160, June 20, 2000]

**NICANOR E. ESTRELLA, PETITIONER, VS. THE SANDIGANBAYAN
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for review on *certiorari* seeking reversal of the Decision^[1] of the Sandiganbayan dated June 3, 1996, in Criminal Case No. 12960, convicting petitioner Nicanor E. Estrella of the crime of malversation of public funds as defined and penalized under Article 217(4) of the Revised Penal Code.

On July 1, 1975, petitioner was appointed as Municipal Cashier^[2] in the Office of the Municipal Treasurer, Isulan, Sultan Kudarat, with a bond in the amount of P28,000.00.^[3] Per Audit Assignment Order No. LGAD 86-1 dated January 28, 1986 issued by the Commission on Audit (COA), Regional Office XII, he was audited of his cash and accounts for the period from March 18 to 24, 1986 only.^[4] For reasons unknown, the cash and accounts of the petitioner were not audited for the period from July 1, 1975, the date of his appointment, up to March 17, 1986.^[5]

Based on the official receipts for the period from February 7, 1986 to March 18, 1986 submitted by the petitioner during the audit examination,^[6] petitioner apparently had daily collections amounting to P247,753.28.^[7] Under office rules, petitioner was supposed to turn over the collections to Municipal Treasurer Jose B. Galvez, but he failed to do so since Galvez was then on leave of absence. As a recourse, petitioner should have deposited his collections with the depository bank of the municipality but he likewise neglected to do.^[8]

During the audit examination, petitioner produced the following:

Cash on hand	P46,756.00 ^[9]
Payrolls/vouchers	65,539.83 ^[10]
Cash advances	65,182.95 ^[11]
Fully paid payrolls/vouchers	68,692.91 ^[12]
Voucher No. 61	3,977.28 ^[13]
TOTAL	<u>P250,148.97</u>

The audit team credited the amount of P250,148.97 against his cash collections amounting to P247,753.28, hence, petitioner incurred no shortage. The remaining amount of P2,395.69^[14] was carried over and deducted from his total cash advance.

Furthermore, the audit examination disclosed that from March 31, 1979 to December 3, 1985, petitioner made a total cash advance of P220,804.25.^[15] The cash advance of P14,025.00^[16] given to the driver of Municipal Treasurer Galvez was included in petitioner's accountability because it was the latter who granted it. Likewise, the amount of P15,000.00^[17] used to pay the salaries of the municipal employees, which petitioner borrowed from Mrs. Leonarda Panceras, in-charge of the Special Educational Fund, was also charged to his cash advances. All in all, petitioner received cash advances totalling P249,829.25.

Of the P249,829.25, petitioner was able to liquidate on November 20, 1985 the amount of P29,083.57^[18] only. The amount of P2,395.69 resulting from the liquidation of petitioner's cash collections was added to P29,083.57, thus, petitioner's accountability was reduced to P218,349.99.^[19]

Consolidated and presented in tabulated form, petitioner's accountability appears as follows:

ACCOUNTABILITY	CASH	CASH
	COLLECTIONS	ADVANCES
	P247,753.28	P220,804.25
		14,025.00
		15,000.00
TOTAL	P247,753.28	P249,829.25
ACCOUNTABILITY		
CREDITS TO		
ACCOUNTABILITY:		
a. Fully paid payroll/vouchers	68,692.91	
b. Voucher No. 61	3,977.28	
Cash Items and Cash on Hand Produced during the Examination		
a. Payroll/vouchers	65,539.83	
b. Cash advances	65,182.95	
c. Cash on hand	46,756.00	
Liquidation under OR No. 5975542		12,085.39
		9,500.00
		7,498.18
TOTAL CREDIT TO	250,148.97	29,083.57
ACCOUNTABILITY		
SHORTAGE	0	220,749.68
Less P2,395.69 ^[20] and		2,395.69
TOTAL SHORTAGE	0	P218,349.99^[21]

Petitioner admitted the accuracy of these different amounts when he certified them to be correct and signed the Report of Cash Examination, List of Cash Items Payroll and Vouchers and the List of Allowed Cash Advances.

Thereafter, the audit team from the Commission on Audit submitted its audit report to the Regional Director, Commission on Audit, Regional Office XII.

On April 11, 1986, State Auditor Binangon served a letter of demand^[22] on the

accused who acknowledged receipt thereof, setting forth the findings of the audit team particularly the shortage and demanded from the petitioner immediate production of the missing funds and a written explanation within 72 hours why the shortage occurred. In the said letter, petitioner was officially informed of his shortage in the amount of P222,327.24 which was stated in the original Report of Cash Examination^[23] but which was adjusted in the amended Report of Cash Examination^[24] dated June 11, 1986 by crediting him the amount of P2,395.69,^[25] thereby reducing his accountability to P218,349.99.

After establishing the amount of the shortage as reflected in Exhibit "D", the OIC Municipal Treasurer submitted his progress report demonstrating further restitution of petitioner's disallowed cash advances and vouchers in the amount of P14,406.00 and P12,303.00 or a total of P26,709.00,^[26] thereby further reducing his liability to P191,640.99. While petitioner admitted his accountability to be only P64,538.95, he doubted the accuracy of the said amount for the reason that in his perception, his liability was allegedly between P30,000.00 and P40,000.00 only.^[27] Resultantly, petitioner was charged with malversation of public funds in the Information filed with respondent Sandiganbayan, allegedly committed as follows:

That on or about March 18, 1986, or sometime prior or subsequent thereto, in the municipality of Isulan, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Municipal Cashier in the above-stated municipality, and as such is accountable and responsible for public funds entrusted to him by reason of his position, with grave abuse of confidence and taking advantage of his public position as such, did then and there wilfully, unlawfully and feloniously misappropriate, embezzle and take away from said public funds the total amount of Two Hundred Eighteen Thousand Three Hundred Forty-nine Pesos and 99/100 (P218,349.99), Philippine Currency, which is misappropriated and converted to his own personal use, to the damage and prejudice of the government in the aforestated amount.

Contrary to law.^[28]

Duly arraigned on January 13, 1989, petitioner Nicanor E. Estrella pleaded "Not Guilty" to the charge.^[29] After the prosecution had rested its case, petitioner filed a "motion to be allowed to file a demurrer to evidence" which was opposed by the prosecution. Respondent court denied the said motion. On May 20, 1995, petitioner again filed a "motion and/or manifestation" for the dismissal of the case for lack of merit. When the incident was heard, petitioner's counsel admitted in open court that the motion and/or manifestation was "in the nature of a demurrer to evidence", hence, pursuant to Sec. 15, Rule 119 of the Rules of Court, petitioner effectively waived his right to present evidence and submitted the case for decision based on the evidence presented by the prosecution. The Sandiganbayan rendered its decision convicting petitioner, the dispositive portion of which reads:

WHEREFORE, the Court finds Nicanor E. Estrella guilty beyond reasonable doubt as principal of the crime of malversation penalized under Par. 4, Article 217, Revised Penal Code.

There being no modifying circumstances and applying the Indeterminate Sentence Law, the Court imposes on the accused the indeterminate penalty from TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of reclusion temporal as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, the fine equal to TWO HUNDRED EIGHTEEN THOUSAND THREE HUNDRED FORTY NINE PESOS AND NINETY-NINE CENTAVOS (P218,349.99), the amount malversed, and perpetual special disqualification.^[30]

Hence, this petition.

Petitioner states five (5) assigned errors, to wit:

- I. The Sandiganbayan gravely erred in not holding that the Cash Examination Report dated March 18, 1986 (Exhibit B for the prosecution) on the basis of which petitioner was said to have allegedly incurred shortage in the amount of P218,349.99 is palpably wrong therefore invoking reasonable doubt accused should be freed of criminal culpability.
- II. The Sandiganbayan gravely erred in not clearly and unequivocally holding to prevent double billing or double payment that there are two (2) distinct kinds or classes of money accountability petitioner has to clear or liquidate, namely: 1) Cash collections, from market fees, stall rentals, real estate tax collections, etc. and, 2) Cash Advances, for salaries of municipal employees, gasoline, maintenance of the municipality, etc. in the amount of P247,753.28 and P249,829.25 respectively.
- III. The Sandiganbayan erred in not holding that the collections in the total amount of P247,753.28 has been fully liquidated or turned over to the municipal coffers of Isulan as evidenced by the prosecution's own Exhibits D-6-B to D-6-S, Liquidation Receipts issued by the Municipal Treasurer of Isulan, in favor of the Municipal Cashier.
- IV. The Sandiganbayan erred in not holding that in carrying over and reflecting the collections still as a liability in the Cash Examination Report (Exhibit B) and charging against it paid payrolls, vouchers is totally wrong since this would result in double billing or double entry.
- V. The Sandiganbayan erred in not charging against Cash Advances all paid payrolls, vouchers, cash on hand and as a consequence clear petitioner of such advances.

Otherwise stated, the basic issue is this: Whether or not the Sandiganbayan erred in finding petitioner guilty beyond reasonable doubt of the crime of malversation.

Petitioner vigorously opposes the Report of Cash Examination disclosing that he is still liable for cash collections, averring it is intrinsically wrong. According to him, the audit team erred in crediting paid payrolls/vouchers, cash on hand or allowed cash item against his accountability for cash collections considering that his cash collections were already liquidated. His basis was the prosecution's own evidence, the 18 receipts^[31] amounting to P235,070.99 issued by the Municipal Treasurer for the liquidation of his daily collections.

As shown in the Report of Cash Examination, there are two kinds of money obligations that petitioner has with the Municipal Government of Isulan, Sultan Kudarat. They are cash collections and cash advances. A cardinal principle in accounting is that fully paid payrolls and vouchers should be credited to cash advances.^[32]

In the case at bar, the audit team admitted that they credited the fully paid vouchers/payrolls in the amount of P68,692.91 and voucher No. 61 in the amount of P3,977.28 or a total of P72,670.19 against petitioner's cash collections as evidenced by the Report of Cash Examination^[33], duly signed^[34] by petitioner. Likewise, the amount of P177,478.78 representing the cash on hand and allowed cash items, produced by petitioner during the audit examination were added to P72,670.19 by the audit team to fully liquidate petitioner's cash collections. It is apparent therefore that petitioner incurred no shortage in his cash collections.

However, from the testimony of the lone prosecution witness, State Auditor Binangon, it appeared that petitioner was able to liquidate his money obligation only during the time of the audit examination. To quote her testimony:

"PJ Garchitorena

If Galvez received that amount from the accused why are we going to hold the accused responsible for that amount?

A Your Honor these liquidations were only submitted at the time of the audit, so the issuance of the receipts were only made at the time of the audit but the dating correspond to the daily liquidation by Mr. Estrella.

Q Are you saying that Mr. Galvez did not receive the sum?

A Only at the time of the audit.

Q Why? Your audit was in March while the receipt was February?

A Because Mr. Galvez was on leave. He only turned over these including the cash on hand at the time of the liquidation.

Q In other words are you saying that Mr. Galvez was not there so he could not receive the money?

A Yes, your Honor.

Q When Mr. Galvez reported for work, Mr. Estrella turned over the money?

A Yes, sir.

Q Is that wrong? To whom did you expect Mr. Estrella to turnover the money he has if Mr. Galvez was not there? Who is Mr. Galvez by the way?

A The Municipal Treasurer.

Q To whom does the cashier turn over his collection?