

## EN BANC

[ G.R. No. 129064, November 29, 2000 ]

**JUAN A. RUEDA, JR., PETITIONER, VS. HONORABLE  
SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

#### *The Case*

The case is an appeal *via certiorari* from the decision of the Sandiganbayan<sup>[1]</sup> finding petitioner Juan A. Rueda, Jr. guilty of malversation of public funds, and sentencing him to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, to pay a fine of P107,299.02 **with subsidiary imprisonment in case of insolvency**,<sup>[2]</sup> and to suffer perpetual disqualification from holding any public office, and to pay the costs, and resolution<sup>[3]</sup> denying reconsideration.

#### **The Charge**

On April 19, 1991, Special Prosecution Officer I Gregorio G. Pimentel, Jr., Office of the Ombudsman filed with the Sandiganbayan an information charging petitioner Juan A. Rueda, Jr., with malversation of public funds, defined and penalized under Article 217 of the Revised Penal Code, to wit:

"That on or about the period of February 8, 1989 to September 20, 1989, in Tigaon, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Municipal Treasurer of Tigaon, Camarines Sur, and as such was accountable for all public funds collected and received by him by reason of the duties of his office, taking advantage of his official position and with grave abuse of confidence, did then and there, willfully, unlawfully and feloniously misappropriate, embezzle and convert to his own personal use and benefit the total sum of P107,299.02, Philippine Currency, to the damage and prejudice of the Philippine government in the amount aforesaid."<sup>[4]</sup>

Upon arraignment on November 29, 1991, petitioner entered a plea of not guilty.<sup>[5]</sup> Trial ensued.

The facts, as found by the Sandiganbayan,<sup>[6]</sup> are as follows:

At times material hereto, petitioner Rueda was the municipal treasurer of Tigaon,



Camarines Sur. On September 20, 1989, a team of state auditors, headed by Amparo O. Albeus, conducted an audit examination of the accountabilities of petitioner Rueda as municipal treasurer of Tigaon, Camarines Sur, covering the period February 8, 1989 to September 20, 1989. As a result of the audit, it was assumed that petitioner had a "cash shortage" of P107,299.02 (Exh. "A-2"). The corresponding report of cash examination was thereafter accomplished. When confronted therewith, petitioner affixed his signature (Exh. "A-1") on the certification on the dorsal portion of the report to the effect that his accountability for the funds of the municipal government of Tigaon, Camarines Sur was correctly stated.

On October 3, 1989, the auditors sent a formal written demand to petitioner Rueda, requiring him to immediately produce the sum of P107,299.02, representing the "shortage" on his accountabilities as municipal treasurer of Tigaon, Camarines, Sur, and to explain in writing within seventy-two (72) hours why the shortage occurred (Exh. "B"). Notwithstanding receipt of the letter (Exh. "B-1"), petitioner failed to have the said amount forthcoming or to tender his written explanation why the shortage occurred.

In his defense, petitioner Rueda disclaimed any criminal liability on the ground that the assumed "shortage" was the result of unliquidated cash advances made by several municipal officials and employees of Tigaon, Camarines Sur, spanning the period covered by the audit as evidenced by various "chits" or "vales" (Exhs. 11-15), and expenses of the municipal government of Tigaon as evidenced by several disbursement vouchers (Exhs. 16, 17, 18, 20, 21, 25, 26, 27, 28, 29 and 30).

Petitioner Rueda declared that the municipal officials and employees took the cash advances from the cash collections of the municipal collectors before the cash collections, in the total amount of P41,234.71, were turned over to him as municipal treasurer. What they turned over to him were the "chits" and "vales" evidencing such cash advances. Although he never tolerated the practice and had verbally warned the municipal officials and employees from making those cash advances, they continued to do so.<sup>[7]</sup>

Petitioner Rueda stressed that the cash advances were made with the consent of the municipal mayor, and had been the practice in the municipality of Tigaon long before he assumed office as municipal treasurer. He would later on deduct the cash advances made from their respective salaries in installment, and after they were paid, he would turn over the amount to the office of the municipal treasurer. With respect to the subject "chits" and "vales", petitioner Rueda declared that after the same were paid, he turned over the amount to the office of the municipal treasurer who then credited those payments as "restitution" of the shortage on his total cash accountability.<sup>[8]</sup> Thus, the "debtors" themselves liquidated the cash advances and petitioner's accountabilities had been fully restituted before the start of the preliminary investigation in the office of the Ombudsman.

A day before the state auditors from the Commission on Audit conducted an audit examination of his cash accountabilities, the internal auditors from the provincial treasurer's office conducted a similar examination. This group of internal auditors advised him not to bring the matter about "vales" or cash advances to the COA audit team because they would only disallow them for lack of supporting



documents. This is the reason why he did not present the disbursement vouchers in the course of the audit conducted by the State Auditors on September 20, 1989.

After the audit of September 20, 1989, petitioner Rueda began completing the supporting documents of those disbursement vouchers. Upon completion of those "vales" and "chits" as supporting documents, he submitted the same together with the disbursement vouchers to the in-charge-of office of the municipal treasurer, who credited the amounts reflected on those disbursement vouchers as "restitution" of the shortage on his total accountability.

Consequently, petitioner Rueda stated that as of July 11, 1990, before the start of the preliminary investigation in the Office of the Ombudsman, all his financial accountabilities had been fully restituted. The cash advances, in the form of "chits" and "vales" amounting to P41,234.71, had been wholly paid or redeemed by their respective debtors. The disbursement vouchers of P53,700.00 representing various legitimate expenses of the municipality of Tigaon, Camarines Sur and the collection deposits in the amount of P12,384.06 were all liquidated. The in-charge-of office of the municipal treasurer of Tigaon, Camarines Sur issued eight official receipts, for various amounts received from petitioner Rueda, to wit:

1. Official Receipt No. 0382089 dated 12/14/89 for P65,000.00
  2. Official Receipt No. 0129158 (O) dated 12/29/89 for P618.56
  3. Official Receipt No. 0382090 (N) dated 1/08/90 for P6,000.00
  4. Official Receipt No. 0382091 (N) dated 1/08/90 for P12,000.00
  5. Official Receipt No. 0382095 (N) dated 4/02/90 for P15,000.00
  6. Official Receipt No. 0382100 (N) dated 5/31/90 for P3,000.00
  7. Official Receipt No. 4846890 (P) dated 7/09/90 for P666.40
  8. Official Receipt No. 4833595 (P) dated 7/11/90 for P5,014.06
- Total P107,299.02

A certification dated July 11, 1990, signed by Mr. Francisco N. Briguera, in-charge-of office of the municipal treasurer of Tigaon, Camarines Sur, and verified and found correct by Melanio C. Alarcon, state auditing examiner (Exh. "9"), showed that petitioner Rueda had fully restituted the cash shortage discovered during the cash examination. As such, petitioner claimed innocence and therefore must be acquitted.<sup>[9]</sup>

On March 19, 1996, the Sandiganbayan (Third Division) promulgated its decision finding petitioner Rueda guilty beyond reasonable doubt of malversation of public funds, defined and penalized under Article 217 (4) of the Revised Penal Code, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered, finding the accused GUILTY beyond reasonable doubt, of the crime of Malversation of Public Funds, under paragraph 4 of Article 217 of the Revised Penal Code and considering the mitigating circumstance of full restitution of the amount malversed, and applying the Indeterminate Sentence Law, this Court hereby sentences the accused to suffer an indeterminate penalty of imprisonment for a period of TEN (10) YEARS and ONE (1) DAY of prison mayor, as minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY reclusion temporal, as maximum; to pay a fine of P107,299.02 with subsidiary imprisonment in case of insolvency, and to



suffer perpetual special disqualification from holding any public office; and to pay the costs.

"SO ORDERED.

"Manila, Philippines, January 25, 1996."<sup>[10]</sup>

On March 29, 1996, petitioner filed with the Sandiganbayan a motion for reconsideration of the decision.<sup>[11]</sup>

However, on May 07, 1997, the Sandiganbayan found the motion not meritorious and denied the same.<sup>[12]</sup>

### **The Appeal**

Hence, this appeal.<sup>[13]</sup>

### **Issues**

(1) Is petitioner liable for malversation of public funds due to a "shortage" of P107,299.02 which consisted of "chits" and "vales" evidencing cash advances from cash collections of the municipal collectors before these were turned over to petitioner municipal treasurer as part of his accountability?

(2) Is he presumed to have put the "missing" public funds to his personal use or allowed others to take such funds when it is an admitted fact that the cash advances were given by the municipal collectors from their cash collections, not from funds in the custody of petitioner?

Petitioner submits that the Sandiganbayan erred:

(1) In finding that the rulings in Villacorta v. People, 145 SCRA 425 [1986] and Quizo v. Sandiganbayan, 149 SCRA 108 [1987] do not apply to the case at bar as they have been reversed by the pronouncement in Meneses v. Sandiganbayan, 232 SCRA 441 [1994] which relied on the ruling in Cabello v. Sandiganbayan, 197 SCRA 94 [1991];

(2) In rejecting petitioner's submission that the evidence must be appreciated under the rulings in Villacorta and Quizo, as the events occurred when the prevailing doctrines were the rulings in Villacorta and Quizo;

(3) In not finding that he succeeded to overthrow the *prima facie* evidence of conversion/misappropriation under Article 217 of the Revised Penal Code;

(4) In rejecting petitioner's explanation as regards the disbursement vouchers and collection deposits such that they do not make out a criminal offense.<sup>[14]</sup>

Actually, the issues really boil down to whether or not petitioner has incurred a "shortage" in his cash accountability as municipal treasurer of the municipality of



### The Court's Ruling

We sustain petitioner's submissions primarily because he did not take or misappropriate or through abandonment or negligence, permit any other person to take or malverse public funds or property in his custody for which he is accountable. He did not put public funds to his "personal use". He was able to properly explain and account fully for his cash accountability of public funds upon demand by the auditors. The assumed "shortage" does not exist and in any event has been restituted in full.

Generally, the factual findings of the Sandiganbayan are conclusive on the Court. However, there are established exceptions to that rule, such as, sans preclusion, when (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record.<sup>[15]</sup> In these instances, this Court is bound to **review the facts in order to avoid a miscarriage of justice.**<sup>[16]</sup> The instant case falls within such exceptions.

Considering the evidence on record, we find that the Sandiganbayan convicted petitioner on probabilities and conjecture, not on hard facts duly established.<sup>[17]</sup> We are thus justified to re-examine, as we do, the evidence.

After an assiduous scrutiny, we find petitioner not guilty of malversation of public funds. The Sandiganbayan found that petitioner admitted his accountability and failed to have duly forthcoming his cash shortage in the amount of P107,299.02 with which he is chargeable, and that he did not tender the required written explanation as to why the shortage was incurred. His failure to do so **instantly created** a *prima facie* evidence pursuant to the last paragraph of Article 217 of the Revised Penal Code that he had put such missing funds to personal use.

We disagree. Petitioner **did not admit any shortage.** The mere fact that he signed the dorsal side of the report of cash examination is not an admission of "shortage". His signature was only evidence that he **received a copy of the report.** Thus, it is incorrect to say that petitioner admitted his shortage when he signed the audit report prepared by the audit team.<sup>[18]</sup> For one thing, he was made to sign it right away; for another, his signature only meant an acknowledgment that a demand from him to produce all his cash, money and paid vouchers had been made. It did not mean that he admitted any shortage. In fact, subsequent events showed that he had fully explained his accountability. Thus, he satisfactorily explained the shortage.<sup>[19]</sup> In other words, there was no direct evidence or proof that he put public funds to personal use.<sup>[20]</sup> When absence of funds was not due to personal use, the presumption is completely destroyed.<sup>[21]</sup> The taking or conversion of public funds for personal use must be affirmatively proved.<sup>[22]</sup> When there is no shortage, taking, appropriation, conversion or loss, there is no malversation.<sup>[23]</sup>

The crime of malversation of public funds is defined and penalized as follows: