

THIRD DIVISION

[G.R. No. 125213, January 26, 1999]

MILAGROS L. DIAZ, PETITIONER, VS. SANDIGANBAYAN, RESPONDENTS

D E C I S I O N

Milagros L. Diaz, erstwhile postmistress of Tandag, Surigao del Sur, was found guilty beyond reasonable doubt of the crime of malversation of public funds defined by Article 217, paragraph 4, of the Revised Penal Code, in a decision rendered by the Sandiganbayan on 15 March 1996 in Criminal Case No. 11295. The Sandiganbayan adjudged:

"WHEREFORE, in view of all the foregoing, the Court hereby finds the accused Milagros L. Diaz GUILTY beyond reasonable doubt of the crime of malversation of public funds as described and penalized in Art. 217 of the Revised Penal Code for the amount of P9,813.99, and after considering the mitigating circumstances of full restitution in her favor and applying the provisions of the Indeterminate Sentence Law, hereby sentences her to suffer the following penalties:

- "(a) imprisonment for an indeterminate period ranging from a minimum of six (6) years and one day of prison mayor to a maximum of ten (10) years and one (1) day of *reclusion temporal*;
- "(b) fine in the amount of P9,813.99, the amount equal to the amount malversed; and
- "(c) perpetual special disqualification for public office.

"She is likewise ordered to pay the Bureau of Posts the amount of P6.70 only to complete the restitution made by the accused.

"SO ORDERED."^[1]

In her petition for review before this Court, Milagros Diaz assails her conviction by the Sandiganbayan and continues to profess her innocence.

The case against petitioner sprung from the implementation of Office Order No. 83-15, dated 03 March 1983, issued by Provincial Auditor Diosdado Lagunday, Surigao del Sur, that directed Auditor II Dominico L. Quijada and Auditing Examiners I Victor B. Tecson and Zenaida C. Cueto to examine the cash and other accounts of petitioner Milagros L. Diaz, then postmistress of Tandag, Surigao del Sur. The following day of 04 March 1983, Quijada required petitioner Diaz to produce all "cash, treasury warrants, checks, money orders, paid vouchers, payrolls and other cash items" that she was officially accountable for. Petitioner, who was bonded for P100,000.00, was found to have made cash payments in the total amount of six thousand one hundred seventy-one pesos and twenty three centavos (P6,171.23), hereunder itemized:

<u>Nature of Claims</u>	<u>Date</u>	<u>Amount</u>
Telephone	Nov. 1980	P 250.00
Rental		

Office Rental, S. Haguisan	Mar. 1981	570.00
TEV, Milagros L. Diaz	Dec. 1980	385.20
Spare Parts, Phil. Mail	Jun. 1979	50.50
50.50		
Gasoline, Phil. Mail	Aug. 1979	1,020.20
Spare Parts, Phil. Mail	Dec. 1979	684.80
Spare Parts, Phil. Mail	Jan. 1980	353.55
Repair, Phil. Mail	Oct. 1980	64.00
Repair, Phil. Mail	Dec. 1980	46.00
Registration Fee, Phil. Mail	Dec. 1980	25.50
Office Rental, S. Haguisan	Aug. 1981	640.00
TEV, Milagros L. Diaz	Nov. 1981	468.50
Repair, Phil. Mail	Jan. 1982	32.00
Mail Carriage, Postmaster	Feb. 1982	12.50
Mail Carriage, Postmaster	Jan. 1982	6.00
Gasoline, Phil. Mail	Sept. 1982	228.44
Gasoline, Phil. Mail	Feb. 1982	238.95
Fare, Pedro D. Sindo	Oct. 1982	5.00
TEV, Milagros L. Diaz	Nov. 1982	250.50
Salary, Carlos M. Acevedo		839.59
TOTAL		P6, 171.23 ^[2]
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The audit team also found petitioner to have sold postage stamps in the sum of P8,020.40 which she had failed to record in her cash book, and since Quijada neither considered the cash items in the aforesaid amount of P6,171.23 as having been validly disbursed, he reported that petitioner had incurred a total "cash shortage" of P14,191.63. He then referred the matter to the Regional Director of the Bureau of Posts.

In a letter, dated 15 April 1983, Quijada asked petitioner to explain why criminal and administrative charges should not be instituted against her. Petitioner did not respond. On 24 May 1985, Quijada executed an affidavit attesting to the incurrence by petitioner of a cash shortage of P14,191.63 and her failure to make a restitution thereof. On 05 March 1986, an information for malversation of public funds was filed against petitioner with the Sandiganbayan; it read;

"That on March 4, 1983 or for sometime prior thereto, in the Municipality of Tandag, Province of Surigao del Sur, Philippines, and within the jurisdiction of

this Honorable Court, said accused Milagros L. Diaz, a public officer being then the Postmaster III of the Bureau of Posts of Tandag, Surigao del Sur and as such is responsible and accountable for the public funds entrusted to her by reason of her position, with grave abuse of confidence and taking advantage of her public position as such, did then and there wilfully, unlawfully and feloniously misappropriate, embezzle and take from said public funds the amount of P14,191.63, Philippine Currency, which he (sic) appropriated and converted to her own personal use, to the damage and prejudice of the government in the aforementioned amount.

"CONTRARY TO LAW."^[3]

Petitioner was arrested by virtue of a warrant of arrest issued by the Sandiganbayan. On 24 March 1986, she posted bail in the amount of P20,000.00; she was forthwith ordered release from custody by the Regional Trial Court of Tandag, Surigao del Sur, Branch XXVII.

The arraignment of petitioner scheduled for 15 May 1986 was reset to 16 June 1986 due to petitioner's illness and later to the following month at her request. Meanwhile, petitioner filed a motion for reinvestigation with the Sandiganbayan contending that the Acting Provincial Fiscal of Tandag, Surigao del Sur, who had conducted the preliminary investigation ultimately recommended the dismissal of the complaint on the ground that petitioner was able to fully account for the alleged shortage of P14,191.63. The motion was granted. The Tanodbayan reinvestigated the case. On 24 April 1987, Mariflor Punzalan-Castillo, the investigating prosecutor, issued an order dismissing the complaint on the basis of her finding that there was "no showing of bad faith on the part of the accused when she defrayed the expenses subject of the audit;"^[4] that the shortage was incurred to defray operational expenses for the Tandag post office; and that the shortage in cash should instead be blamed on the failure, or delay, of the Regional Office of the Bureau of Posts in replenishing the amount spent for office operation. The investigating prosecutor said:

"Only the amount of P1,786.89 has so far been replenished by the Regional Office. The accountant of the Regional Office, Bureau of Post, Davao City, issued a certification that the amount of P4,384.34 representing claims of Mrs. Diaz were listed in the statement of payables but unbooked in their book of accounts due to lack of funds. The remaining shortage in the amount of P9,807.29 was paid by the accused also pending replenishment from the Regional Office.

"Lastly, the new Postmaster of Tandag, Surigao del Sur issued a certification that Mrs. Milagros Diaz has already been cleared of her money accountability."

^[5]

The prosecutor thereupon filed with the Sandiganbayan a motion to withdraw the information against petitioner from which the Commission on Audit ("COA"), through its General Counsel, excepted when directed by the Sandiganbayan to comment. On 19 August 1987, the Sandiganbayan denied the motion to withdraw the information and held that the restitution made by petitioner would not exculpate her from liability.

On 01 December 1987,^[6] petitioner was arraigned. She pleaded no guilty to the indictment.

A pre-trial was conducted on 03 December 1987 during which petitioner's counsel informed the Sandiganbayan that the Regional Office of the Bureau of Posts had reimbursed the entire amount for which petitioner was held accountable thereby confirming that the assailed disbursements were truly legitimate. On 18 December

1987,petitioner wrote Presiding Justice Francis E. Garchitorena a letter^[7] submitting to the Sandiganbayan a carbon copy of the certification of Eduardo F. Cauilan, Chief of the Finance Section of Region XI of the Bureau of Posts to the following effect:

"CERTIFICATION

To Whom It May Concern:

"This is to certify that according to the records of this office, the following expenses forming part of the accountability of former Postmaster Milagros L. Diaz of Tandag, Post Office, Tandag, Surigao del Sur, were legitimate expenses having to do with postal operations of said post office all incurred in the exigencies and interest of public service, which were all considered and taken cognizance by this office, details of which are listed in separate statement forming a part of this certification covering the total amount of P14,503.31.

"This certification is issued upon request and representation by said Milagros Diaz for whatever legal purpose it may serve on her behalf.

"Issued this 18th day of December, 1987 at Davao City, Philippines.

(Sgd)
EDUARDO F. CAUILAN
Chief, Finance Section

NOTED:
(Sgd)
DIOSCORO A. GELITO
Asst. Regional Director
Officer-In-Charge"^[8]

The statement referred to in the certificate indicated that the expenses incurred had, in fact, been liquidated. On 08 February 1988, Special Prosecutor Fidel D. Galindez informed the Sandiganbayan of the advice he had received from the Bureau of Posts that the questioned items were "appropriate expenses by the Bureau."^[9] On 22 March 1988, the prosecutor manifested that with the aforementioned certification of the Chief of the Finance Section of Region XI of the Bureau of Post, holding to be legitimate expenses the amount covered by the supposed shortage incurred by petitioner, there was no *prima facie* case of malversation. The motion drew observation from COA, through Assistant Director Jose G. Molina, that the statement of petitioner's total accountability of P14,503.31 was inaccurate.

On 17 June 1988, the Sandiganbayan again denied the motion to withdraw the information and ruled that the withdrawal of the information was not justified because petitioner had already been arraigned and that the resolution of the conflict on the propriety of the disbursements made by petitioner was a matter of evidence that should instead be threshed out during trial.

Trial ensued with the prosecution and the defense presenting their respective version of the case.

On 15 March 1996, following the submission of evidence, the Sandiganbayan promulgated its decision convicting petitioner of the crime of malversation. Touching base on the evidence of petitioner that the expenses she had incurred were "office related," the Sandiganbayan said that the ruling in *Villacorta vs. People*^[10] where such expenses were held to be "payments made in good faith, thus destroying in these instances the

presumption of peculation in Art. 217 of the Revised Penal Code," would only give "the accused the benefit of the doubt" by allowing her to show that the expenses were "indeed office related expenses, and thus valid cash items" requiring thereby "for presentation at audit of the required receipts accompanied by the duly accomplished and approved vouchers, as well as a demonstration that these claims had not been reimbursed and were still outstanding" at the time of audit. Conceding that the amounts of P1,081.00 and P3,296.64, or a total of P4,377.64, were allowable, the Sandiganbayan said that petitioner was "still short of funds by P9,813.99" which petitioner would be "presumed to have malversed x x x there being no satisfactory proof presented to substantiate the legitimate disbursement thereof."

In tackling the claim of petitioner that she had liquidated rather than **restituted** the cash items, the Sandiganbayan explained:

"The distinction between liquidation and restitution, of course, is important. A liquidation of cash item means the validation of the transaction, while restitution means that the accountable officer had to dig from his or her private resources to cover the amount involved. The amount paid by the accused as evidenced by the official receipts she presented in court represented the amounts which she had already received but she never turned over until long after the audit. This only meant that she has paid these amounts to cover her cash shortage. Thus, these items do not represent liquidation but restitution."^[11]

It likewise noted that restitution is merely "recognized in jurisprudence (to be) a mitigating circumstance in malversation cases."^[12]

In her petition for review before this Court, petitioner insists that she did not appropriate or convert to her personal use the final sum of P9,813.99 held by the Sandiganbayan to have been malversed by her; that the amount has been used to defray the expenses for office rentals, telephone rentals, spare parts, gasoline and registration fees, and that she did have the corresponding authority to pay those items of expenses.

The crime of malversation for which petitioner has been indicted is defined and penalized under Article 217 of the Revised Penal Code; its pertinent provisions read:

"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 of malversation of such funds or property, shall suffer:

"x x x x x x x x x

"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 funds or property with which he is chargeable, upon demand by any duly authorized