

FIRST DIVISION

[G.R. No. 211543, December 09, 2015]

DOMINGO G. PANGANIBAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES. RESPONDENT.

D E C I S I O N

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] of the 18 November 2013 Decision^[2] rendered by the Fifth Division of public respondent Sandiganbayan in Criminal Case No. SB-08-CRM-0031, entitled *People of the Philippines v. Domingo G. Panganiban*, the decretal portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered finding accused DOMINGO G. PANGANIBAN GUILTY beyond reasonable doubt of malversation of public funds, and considering the mitigating circumstance of restitution of the amount malversed, he is hereby sentenced to suffer the indeterminate penalty of imprisonment [of] ten (10) years and one (1) day to twelve (12) years, five (5) months and ten (10) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months of *reclusion temporal*, as maximum.

Accused Domingo G. Panganiban is further ordered to pay a fine equal to the amount malversed or P463,931.78, and, to suffer the penalty of perpetual special disqualification from holding any public office.

SO ORDERED.^[3]

The following factual and procedural antecedents may be gleaned from the records:

Having already previously served as mayor of the Municipality of Sta. Cruz, Laguna from 2004 to 2007, petitioner Domingo G. Panganiban was once again elected to said position in the May 2013 elections. Sometime in May 2006 or during his previous term, petitioner obtained a cash advance in the sum of Php500,000.00 from the municipality, ostensibly for the purpose of defraying the projected expenses^[4] of a planned official travel to the City of Onkaparinga, Adelaide, South Australia, to study and research said city's sustainable environmental projects.^[5] The availment of the cash advance is evidenced by, among others, the following documents: (a) Disbursement Voucher (DV) No. 05-372 dated 17 May 2006 signed by Caridad P. Lorenzo (Lorenzo), the Municipal Accountant; (b) an Obligation Slip dated 16 May 2006; (c) a copy of the 17 May 2006 check in the sum of Php500,000.00 prepared by Ronaldo O. Valles (Valles), the Officer-in-Charge of the Municipal Treasurer's Office; and (d) a Promissory Note executed by petitioner.^[6] Although scheduled for 9 June to 9 July 2006, the official travel of petitioner did not

push through for undisclosed reasons.^[7]

His attention called to the unliquidated cash advance, petitioner instructed Lorenzo to withhold his salaries which the latter started doing in July 2006 and recorded and posted the payments in the journal and subsidiary ledger, respectively.^[8] Assigned in 2006 as audit team leader for the local government units of the Province of Laguna, on the other hand, Commission on Audit (COA) State Auditor Rebecca C. Ciriaco (Ciriaco) examined the financial records of the municipality of Sta. Cruz and discovered that the aforesaid cash advance had not yet been liquidated. In addition to submitting her reports in accordance with COA regulations, Ciriaco consequently served a letter dated 15 August 2006, demanding petitioner's liquidation of the cash advance. On the basis of the documents on hand, however, Ciriaco noted that petitioner had an unliquidated cash advance of Php463,931.78 as of 31 August 2006, a fact she reflected in the quarterly report she submitted to the COA Regional Cluster Director.^[9]

As a consequence, an investigation of the non-liquidation of the cash advance was subsequently conducted by the Office of the Deputy Ombudsman for Luzon. During the pendency thereof, petitioner's salary deductions continued such that, by the expiration of his term in June 2007, the remaining unliquidated amount was reduced to Php256,318.45.^[10] Prior to her assignment to other units, Ciriaco submitted a report stating that, as of 30 September 2007, said latter sum remained unliquidated from the time the cash advance was granted on 17 May 2006.^[11] Assigned to the municipality in October 2007, on the other hand State Auditor Augusto Franco Tria (Tria) came across said outstanding cash advance while preparing his quarterly report and, not receiving the records from Lorenzo, wrote a demand letter dated 10 October 2007 to petitioner.^[12] In an explanation dated 16 October 2007, the latter apprised Tria of the arrangement to have the cash advance liquidated by means of salary deductions.^[13]

On 9 November 2007, petitioner was issued a certification signed by, among others, Lorenzo and Valles, to the effect that the unliquidated balance of the subject cash advance will be deducted from his terminal leave pay.^[14] The record shows that, on 19 November 2007, the Office of the Deputy Ombudsman for Luzon issued a resolution, finding probable cause to charge petitioner with the crime of malversation of public funds. Although an information charging him for malversation of the full sum of Php500,000.00 was subsequently filed and docketed as Criminal Case No. SB-08-CRM-0031 before public respondent,^[15] petitioner paid the unliquidated balance by causing the same to be deducted from his terminal leave pay. The payment is evidenced by DV No. 100-2007-11-1152 dated 22 November 2007 which shows that the sum of Php256,318.45 was deducted from his terminal leave pay of Php359,947.98.^[16] When the COA Regional Office called him about petitioner's unliquidated cash advance in December 2007, Tria consequently reported that the amount was already paid in foil by means of the aforesaid deduction.^[17]

With the issuance of the warrant for his arrest pursuant to public respondent's Resolution dated 21 February 2008, petitioner posted bail in the reduced sum fixed in the order granting his motion for reduction of the recommended bail. Acting on petitioner's motion for reconsideration of its 19 November 2007 Resolution, the

Office of the Deputy Ombudsman for Luzon, in turn, issued a Memorandum dated 28 September 2008 which, while denying said motion for lack of merit, recommended the filing of an amended information to correct the amount subject of the charge. The accusative portion of the amended information subsequently filed states:

That on May 17, 2006, or sometime prior or subsequent thereto, in Santa Cruz, Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Domingo G. Panganiban, a public officer, being then the Municipal Mayor of Sta. Cruz, Laguna and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, obtained cash advances in the total amount of Php500,000.00 from the Municipal Treasury of Sta. Cruz, Laguna to finance his projected travel to Adelaide, South Australia but said accused once in possession of said amount of money did not undertake his official travel and **was only able to return the amount of Php36,068.22 upon demand by a duly authorized officer and therefore has willfully, unlawfully and feloniously taken, misappropriated and converted to his own personal use and benefit the amount of Php463,931.78**, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.^[18]

Arraigned with the assistance of counsel, petitioner entered a "Not Guilty" plea on 26 June 2009. The preliminary and pre-trial conferences subsequently terminated, public respondent went on to conduct the trial of the case on the merits. To prove the accusation, the prosecution called Lorenzo, Ciriaco, Valles and Leilani T. Penarroyo (Penarroyo), a Clerk assigned at petitioner's office who acknowledged receiving and turning over to petitioner the 15 August 2006 demand letter from the COA.^[19] Marked in the course of the testimonies of the above-named witnesses, the following documents were admitted in evidence by public respondent when formally offered by the prosecution: (a) DV No. 05-372; (b) Obligation Slip; (c) Duplicate Copy of the Check; (d) documents pertaining to petitioner's planned official travel to Adelaide, South Australia; (e) report, letter, indorsement and documents regarding the unliquidated cash advance as of 31 August 2006; (f) COA's 15 August 2006 demand letter to petitioner; and (g) the list of officials with unliquidated advances as of 30 September 2007 prepared by Ciriaco.^[20]

Its Demurrer to Evidence denied in public respondent's (Minute) Resolution dated 28 June 2010,^[21] the Defense proceeded to present the testimonies of Lorenzo and Tria.^[22] In lieu of the testimonies of Farra T. Salvador (Salvador), the Municipal Human Resource Manager, the parties stipulated that said witness would be able to testify on petitioner's earned leave record.^[23] The parties likewise dispensed with the testimony of Valles whose signatures on the 9 November 2007 certification and DV No. 100-2007-11-1152 were, instead, admitted.^[24] The following documents were, upon being formally offered by the Defense, further admitted in evidence by public respondent, to wit: (a) subsidiary ledger of the municipality; (b) petitioner's statement of leave credits, leave record and application for terminal leave; (c) DV No. 100-2007-11-1152, together with the journal entry voucher and petitioner's obligation request for the payment of terminal leave; (d) the 9 November 2007 Certification; (e) a 9 July 2009 Certification clearing petitioner of money and

property accountabilities; (f) COA's 10 October 2007 demand letter; and (g) petitioner's 16 October 2007 explanation.^[25]

On 18 November 2013, public respondent rendered the herein assailed Decision^[26] finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds, upon the following ratiocinations: (a) the defense of good faith is unavailing since petitioner was legally obliged to return the money immediately after the period of his intended travel lapsed; (b) the cash advance released in his favor was fully returned by petitioner by way of deductions from his salaries and terminal leave pay more than a year after COA's demand for the settlement thereof and long after his last term of office expired; (c) payment not being a cause for extinction of criminal liability, the full restitution of the amount alleged to have been malversed does not exculpate petitioner therefrom; and (d) at most, restitution of the malversed amount is a mitigating circumstance that entitles petitioner to a reduction of the imposable penalty. Duly opposed by the Prosecution, petitioner's motion to reopen the case anchored on the supposed negligence of his previous counsel was denied in public respondent's Resolution dated 5 March 2014,^[27] hence, this petition.

Petitioner urges the grant of his petition and the reversal of the assailed decision on the following grounds:

A.

THE SANDIGANBAYAN GRAVELY ERRED IN CONVICTING THE PETITIONER IN ITS APPEALED DECISION.

B.

THE SANDIGANBAYAN ERRED IN ITS APPEALED DECISION WHEN IT IMPOSED A PRISON SENTENCE THAT IS NOT IN ACCORDANCE WITH THE INDETERMINATE SENTENCE LAW.^[28]

The petition is impressed with merit.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.^[29] For a prosecution of the crime to prosper, concurrence of the following elements must be satisfactorily proved: (a) the offender is a public officer, (b) he has custody or control of the funds or property by reason of the duties of his office, (c) the funds or property are public funds or property for which he is accountable, and, most importantly, (d) he has appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.^[30] Article 217 of the *Revised Penal Code* pertinently provides as follows:

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

x x x x

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 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 officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

Public respondent correctly ruled that petitioner was a public officer, satisfying the first element of the crime of malversation of public funds or property. However, public respondent erroneously ruled that petitioner had custody or control of the funds or property by reason of the duties of his office; that the funds or property are public funds or property for which he was accountable; and that he had consented, or, through abandonment to take them.

To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. Petitioner was not shown to have been such public officer, even temporarily, in addition to his main duties as mayor. Needless to say, he was not accountable for any public funds or property simply because it never became his duty to collect money or property from the public.^[31] Therefore, petitioner could not have appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.

The confusion in this case arose from the start, when the Office of the Deputy Ombudsman for Luzon accused petitioner with the crime of malversation of public funds, notwithstanding the fact that what he received from the Municipality of Sta. Cruz Laguna was a cash advance - a cash advance which was not shown to have been fraudulently taken by petitioner from the municipality, either by himself or in cahoots with the treasurer, cashier or any other accountable officer. In fact, said cash advance was shown to have been properly acquired by documentary proof.

As narrated, petitioner was granted a cash advance in the sum of Php500,000.00 for an intended official travel to Adelaide, Australia from 9 June to 9 July 2006 which did not push through. His attention called to his obligation to liquidate the aforesaid