

## FIRST DIVISION

[ G.R. No. 185960, January 25, 2012 ]

**MARINO B. ICDANG, PETITIONER, VS. SANDIGANBAYAN  
(SECOND DIVISION) AND PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before us is a petition for certiorari under Rule 65 seeking to reverse and set aside the Decision<sup>[1]</sup> dated May 26, 2008 and Resolution<sup>[2]</sup> dated November 18, 2008 of the Sandiganbayan (SB) (Second Division) which convicted petitioner of the crime of malversation of public funds.

The factual antecedents:

Petitioner Marino B. Icdang, at the time of the transactions subject of this controversy, was the Regional Director of the Office for Southern Cultural Communities (OSCC) Region XII in Cotabato City.

On January 19, 1998, a Special Audit Team was formed by the Commission on Audit (COA) Regional Office XII, Cotabato City pursuant to COA Regional Office Order No. 98-10<sup>[3]</sup> to conduct comprehensive audit on the 1996 funds for livelihood projects of the OSCC-Region XII. Hadji Rashid A. Mudag was designated as team leader, with Jose Mercado, Myrla Fermin and Evelyn Macala as members.

In its report submitted to the COA Regional Director, the audit team noted that petitioner was granted cash advances which remained unliquidated. In the cash examination conducted by the team on March 10, 1998, it was discovered that petitioner had a shortage of P219,392.75. Out of the total amount of P920,933.00 released in September 1996 to their office under sub-allotment advice No. COT-043, to cover the implementation of various socio-economic projects for the cultural communities of the region, cash advances amounting to P407,000.00 were granted from October 1, 1996 to February 5, 1997 to officials and employees including petitioner. Per records, it was noted that P297,392.75 of these cash advances remained unliquidated as of December 31, 1997.<sup>[4]</sup>

Petitioner never denied that he received a total of P196,000.00 evidenced by disbursement vouchers and checks payable to him, as follows:

<u>DV</u> <u>No.</u>	<u>Check</u> <u>No.</u>	<u>Date</u>	<u>Purpose</u>	<u>Amount</u>
-------------------------	----------------------------	-------------	----------------	---------------

0988	893433	10/01/96	Initial funding for the P50,000.00 Ancestral Domain Development Program
0989	893432	10/01/96	Establishment of ICC- IAD 50,000.00
1150	916539	11/05/96	Support to Cooperative 6,000.00
0987	893429	10/01/96	Adult Literacy Program 60,000.00
0986	893430	10/01/96	Child Care Development 30,000.00 <sup>[5]</sup> Program

In addition, per the Schedule of Cash Advance Intended for Livelihood Projects,<sup>[6]</sup> the following amounts were also for petitioner's account:

<u>Check No.</u>	<u>Date</u>	<u>Purpose</u>	<u>Amount</u>
x x x x			
893633	11/15/96	Operationalization of Tribal Cooperative	11,000.00
893768	12/13/96	Fishpen Development Program	10,000.00
893788	12/20/96	Operationalization of Tribal Cooperative	5,000.00
916634	02/05/97	Ancestral Domain Development Program	10,000.00
		<b>[TOTAL CASH ADVANCES P]</b>	<b>232,000.00</b>
		-	

In the Audit Observation Memorandum No. 97-001 (March 18, 1998) sent by the COA Region XII to the OSCC-Region XII reflecting the findings of the Special Audit Team, it was also disclosed that: (1) Funds intended for programs for Ancestral Domain Claim Development and to support tribal cooperatives, were cash advanced, but the proposed projects were not implemented by the OSCC-Region XII; (2) No official cashbooks are maintained to record cash advances and disbursements from the 1996 funds allocated for livelihood projects; and (3) Out of the total P920,933.00 allocated for 1996 livelihood projects, the amount of P445,892.80 was disbursed leaving a balance of P475,040.20; however, final trial balance as of December 31, 1996 showed that the office has exhausted the allocated funds for the whole year; the utilization of the P475,040.20 could not be explained by the Accountant so that it may be concluded that such was misappropriated. Petitioner indicated his comments on the said memorandum by requesting for extension to restitute the amount of P306,412.75 (which included the P67,000.00 cash shortage of another OSCC-Region XII official, Ma. Teresa A. Somorostro), and explaining that the P475,040.20 was not misappropriated as evidenced by their own financial report and re-statement of allotment and obligation for the month ending December 31,

From the field interviews conducted by the audit team, it was also gathered that the intended projects covered by the cash advances were never implemented, such as the proposed Children Development Project in Bgy. Matila; adult literacy program in Cotabato; operationalization of tribal cooperative in Bgy. Bantagan, Sultan Kudarat; and establishment of ICC-IAD in Magpet, Cotabato where a complaint was made to the effect that the OSCC-Region XII office allegedly upon receipt of funds prepares a project for implementation which is different from that project proposal submitted by the project officer. Supposedly, there was likewise no support or assistance given by the OSCC-Region XII to the activities of the Provincial Special Task Force on Ancestral Domain for the indigenous people of Columbio, Sultan Kudarat, and to Bgys. Salumping, Municipality of Esperanza, President Roxas, and Matrilala.<sup>[8]</sup> And as already mentioned, the audit team discovered that the accountable officers of OSCC-Region XII failed to maintain the official cashbook so that there were no recording of transactions whenever a cash advance was granted; only subsidiary ledgers were used by the accounting section.

From the P232,000.00 accountabilities of petitioner, the COA deducted the following: P10,000.00 covered by acknowledgment receipt by A. Anas; various cash invoices in the amount of P2,197.25; and Reimbursement Expense Receipts (RERs) in the amount of P410.00. After the cash examination, petitioner was still found short of P219,392.75.<sup>[9]</sup> Consequently, a demand letter was sent by the COA for petitioner to immediately produce the missing funds. In his letter-reply dated March 19, 1998, petitioner requested for one-week extension to comply with the directive.<sup>[10]</sup>

However, the one-week period lapsed without compliance having been made by petitioner. Hence, the audit team recommended the initiation of administrative and criminal charges against him, as well as Ms. Somoroostro, Chief of the Socio-Cultural Development Concerns Division of OSCC-Region XII.

On September 21, 2000, the Office of the Ombudsman found probable cause against petitioner and Ms. Somoroostro for violation of Art. 217 of the Revised Penal Code, as amended, and Section 3(e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).

The Amended Information charging petitioner with the crime of Malversation of Public Funds (Criminal Case No. 26327) reads:

That during the period from October 1996 to February 1997 in Cotabato City, Philippines and within the jurisdiction of this Honorable Court, accused Marino B. Icdang, a public officer being then the Regional Director of the Office for Southern Communities (OSCC), Region XII, Cotabato City and as such is accountable officer for the public fund received by him that were intended for the socio-economic and cultural development projects of the OSCC Region XII, did then and there willfully, unlawfully and feloniously take[,] misappropriate, embezzle and convert for his own personal use and benefit from the said fund the aggregate amount of TWO HUNDRED NINETEEN THOUSAND THREE HUNDRED NINETY-TWO PESOS AND 75/100 (P219,392.75) to the

damage and prejudice of the government in the aforesaid sum.

CONTRARY TO LAW.<sup>[11]</sup>

Petitioner was likewise charged with violation of Section 3(e) of R.A. No. 3019 (Criminal Case No. 26328). The lone witness for the prosecution was Hadji Rashid A. Mudag, State Auditor IV of COA Region XII. He presented vouchers which they were able to gather during the cash examination conducted on March 10, 1998, which showed cash advances granted to petitioner, and in addition other cash advances also received by petitioner for which he remained accountable, duly certified by the Accountant of OSCC-Region XII. Petitioner was notified of the cash shortage through the Audit Observation Memorandum No. 97-001 dated March 18, 1998 and was sent a demand letter after failing to account for the missing funds totalling P219,392.75.<sup>[12]</sup>

On cross-examination, witness Mudag admitted that while they secured written and signed certifications from project officers and other individuals during the field interviews, these were not made under oath. The reports from Sultan Kudarat were just submitted to him by his team members as he was not present during the actual interviews; he had gone only to Kidapawan, Cotabato and only prepared the audit report. He also admitted that they no longer visited the project sites after being told by the project officers that there was nothing to be inspected because no project was implemented.<sup>[13]</sup>

On May 26, 2008, the SB's Second Division rendered its decision convicting petitioner of malversation and acquitting him from violation of Section 3(e) of R.A. No. 3019. The dispositive portion reads:

WHEREFORE, premises considered judgment is hereby rendered finding accused MARINO B. ICDANG Guilty beyond reasonable doubt of Malversation of Public Funds or Property in Criminal Case No. 26327 and finding in his favor the mitigating circumstance of voluntary surrender, is hereby sentenced to an indeterminate penalty of, considering the amount involved, TEN (10) YEARS and ONE (1) DAY of PRISION MAYOR as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal as maximum, to suffer the penalty of perpetual special disqualification, and to pay a fine of P196,000.00 without subsidiary imprisonment in case of insolvency. He is also ordered to reimburse the government of the said amount.

In Criminal Case No. 26328, he is hereby ACQUITTED on the basis of reasonable doubt.

With cost against accused.

SO ORDERED.<sup>[14]</sup>

The SB ruled that the prosecution has established the guilt of petitioner beyond reasonable doubt for the crime of malversation of public funds, the presumption

from his failure to account for the cash shortage in the amount of P232,000.00 remains un rebutted. As to the reasons given by petitioner for non-compliance with the COA demand, the SB held:

A careful perusal of Mr. Icdang's Letter-Answer dated 19 March 1998 (Exh. "J") to the demand letter and directive issued by the COA clearly shows he was just asking for extension of time to comply with the demand letter. There was virtually no denial on his part that he received the P232,000.00 amount earmarked for the various government projects. His reasons were *first*, the committee tasked to prepare the liquidation of the cash advances are still in the process of collecting all the documents pertinent to the disbursement of the project funds; and *second*, the payees to the disbursements were still to be notified so that they will have to come to the office to affix their signatures as payees to the liquidation vouchers.

This response is queer because as he gave the money to the supposed payees, he should have kept a ledger to keep track of the same, considering that these are public funds. More importantly, Mr. Icdang was given ample opportunity to dispute the COA findings that there was indeed a shortage. Instead of doing so, Mr. Icdang never presented the promised proof of his innocence before this Court during the trial of this case. Thus, the prima facie presumption under Article 217 of the Revised Penal Code, that the failure of a public officer to have duly forthcoming the public funds with which he is chargeable, upon demand, shall be evidence that he put the missing funds for personal uses, arises because *first*, there was no issue as to the accuracy, correctness and regularity of the audit findings and *second*, the funds are missing.<sup>[15]</sup>

Petitioner filed a motion for reconsideration requesting that he be given another chance to present his evidence, stating that his inability to attend the trial were due to financial constraints such that even when some of the scheduled hearings were sometimes held in Davao City and Cebu City, he still failed to attend the same. However, the SB denied the motion noting that the decision has become final and executory on June 10, 2008 for failure of petitioner to file a motion for reconsideration, or new trial, or appeal before that date.

Hence, this petition anchored on the following grounds:

I. THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT RENDERED ITS JUDGMENT OF CONVICTION AGAINST PETITIONER DESPITE ITS KNOWLEDGE THAT PETITIONER WAS NOT ABLE TO ADDUCE HIS EVIDENCE DUE TO VARIOUS CIRCUMSTANCES, THAT HE WAS NOT ASSISTED BY COUNSEL DURING THE PROMULGATION OF JUDGMENT; THE GROSS AND RECKLESS NEGLIGENCE OF HIS FORMER COUNSEL IN FAILING TO ASSIST HIM DURING THE PROMULGATION; HIS FINANCIAL AND ECONOMIC DISLOCATION WHICH MADE HIM UNABLE TO ATTEND THE SCHEDULED TRIALS IN MANILA,