

EN BANC

[G.R. Nos. 153304-05, February 07, 2012]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON.
SANDIGANBAYAN (FOURTH DIVISION), IMELDA R. MARCOS,
JOSE CONRADO BENITEZ AND GILBERT C. DULAY,*
RESPONDENTS.**

D E C I S I O N

BRION, J.:

Before us is a petition for *certiorari* filed by the People of the Philippines (*petitioner*) assailing the decision dated March 22, 2002 of the Sandiganbayan^[1] in Criminal Case Nos. 20345 and 20346 which granted the demurrers to evidence filed by Imelda R. Marcos, Jose Conrado Benitez (*respondents*) and Rafael Zagala.

The Facts

The petition stemmed from two criminal informations filed before the Sandiganbayan, charging the respondents with the crime of malversation of public funds, defined and penalized under Article 217, paragraph 4 of the Revised Penal Code, as amended. The charges arose from the transactions that the respondents participated in, in their official capacities as Minister and Deputy Minister of the Ministry of Human Settlements (*MHS*) under the MHS' Kabisig Program.

In **Criminal Case No. 20345**, respondents, together with Gilbert C. Dulay, were charged with malversation of public funds, committed as follows:

That on or about April 6, 1984 or sometime and/or [subsequent] thereto, in Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers charged with the administration of public funds and as such, accountable officers, Imelda R. Marcos being then the Minister of Human Settlements, Jose Conrado Benitez being then the Deputy Minister of Human Settlements and Gilbert C. Dulay being then [the] Assistant Manager for Finance, Ministry of Human Settlements, while in the performance of their official functions, taking advantage of their positions, acting in concert and mutually helping one another thru manifest partiality and evident bad faith did then and there, willfully, unlawfully and criminally, in a series of anomalous transactions, abstract the total amount of P57.954 Million Pesos (*sic*), Philippine Currency from the funds of the Ministry of Human Settlements in the following manner: **accused Conrado Benitez approved the series of cash advances made and received by Gilbert C. Dulay, and made it appear that the funds were transferred to the University of Life, a private foundation**

represented likewise by Gilbert C. Dulay when in truth and in fact no such funds were transferred while Imelda R. Marcos concurred in the series of such cash advances approved by Jose Conrado Benitez and received by Gilbert C. Dulay and in furtherance of the conspiracy, in order to camouflage the aforesaid anomalous and irregular cash advances and withdrawals, Imelda R. Marcos requested that the funds of the KSS Program be treated as "Confidential Funds"; and as such be considered as "Classified Information"; and that the above-named accused, once in possession of the said aggregate amount of P57.954 Million Pesos (*sic*), misappropriated and converted the same to their own use and benefit to the damage and prejudice of the government in the said amount.

CONTRARY TO LAW. [Emphasis ours]^[2]

In **Criminal Case No. 20346**, respondents together with Zagala were charged with malversation of public funds under these allegations:

That on or about April 6 to April 16, 1984^[3] and/or sometime or subsequent thereto, in Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers charged with the administration of public funds and as such, accountable officers, Imelda R. Marcos being then the Minister of Human Settlements, Jose Conrado Benitez being then the Deputy Minister of Human Settlements[,], and Rafael Zagala being then [the] Assistant Manager for Regional Operations and at the same time Presidential Action Officer, while in the performance of their official functions, taking advantage of their positions, acting in concert and mutually helping one another thru manifest partiality and evident bad faith[,], did then and there, willfully, unlawfully and criminally, in a series of anomalous transactions, abstract from the funds of the Ministry of Human Settlements the total amount of P40 Million Pesos (*sic*), Philippine Currency, in the following manner: **Jose Conrado Benitez approved the cash advances made by Rafael Zagala and Imelda R. Marcos concurred in the series of cash advances approved by Jose Conrado Benitez in favor of Rafael G. Zagala; and in furtherance of the conspiracy, Imelda R. Marcos in order to camouflage the aforesaid anomalous and irregular cash advances, requested that funds of the KSS Program be treated as "Confidential Funds"; and as such be considered as "Classified Information"; and the above-named accused, once in possession of the total amount of P40 Million Pesos (*sic*), misappropriated and converted the same to their own use and benefit to the damage and prejudice of the government in the said amount.**

CONTRARY TO LAW. [Emphasis ours]^[4]

Only the respondents and Zagala were arraigned for the above charges to which

they pleaded not guilty; Dulay was not arraigned and remains at large. On March 15, 2000, Zagala died, leaving the respondents to answer the charges in the criminal cases.

After the pre-trial conference, a joint trial of the criminal cases ensued. The prosecution's chief evidence was based on the lone testimony of Commission of Audit (COA) Auditor Iluminada Cortez and the documentary evidence used in the audit examination of the subject funds.^[5]

The gist of COA Auditor Cortez' direct testimony was summarized by the Sandiganbaya, as follows:

In Criminal Case No. 20345 -

[s]he was appointed on March 31, 1986 by then COA Chairman Teofisto Guingona, Jr. to head a team of COA auditors. Upon examination of the documents, she declared that an amount of P100 Million Pesos (*sic*) from the Office of Budget and Management was released for the KSS Project of the Ministry of Human Settlements (MHS) by virtue of an Advice of Allotment for Calendar Year 1984. Also, an amount of P42.4 Million Pesos (*sic*) was separately disbursed for the Kabisig Program of the Ministry of Human Settlements. With regard to the amount of P100 Million Pesos (*sic*) received by the MHS, P60 Million Pesos (*sic*) [was] disbursed through cash advances. Of the P60 Million Pesos (*sic*) in cash advances, accused Zagala received P40 Million Pesos (*sic*) in four (4) disbursements while accused Dulay received the remaining P20 Million Pesos (*sic*) in two disbursements.

With respect to accused Rafael Zagala, the cash advances consist of four (4) disbursement vouchers in the amount of P5 Million Pesos (*sic*), P10 Million Pesos (*sic*), P10 Million Pesos (*sic*) and P15 Million Pesos (*sic*). All of these vouchers are in the name of accused Zagala as claimant and accused Benitez as approving officer and are accompanied by their corresponding Treasury Warrants that were countersigned by accused Benitez and approved by accused Dulay.

In contrast, x x x a disbursement voucher in the amount of P10 Million Pesos (*sic*) was drawn in favor of accused Gilbert Dulay and approved by accused Benitez. Pursuant to this, a Treasury Warrant was issued to the order of accused Dulay, countersigned by accused Benitez and approved by accused Zagala. Another voucher was drawn in favor of accused Dulay in the amount of P10 Million Pesos (*sic*) and approved by accused Benitez. Again, a Treasury Warrant was issued to the order of accused Dulay in the amount of P10 Million Pesos (*sic*), which was countersigned by accused Benitez and approved by accused Zagala.

x x x [A]ccused Marcos sent a letter to then President Ferdinand E. Marcos requesting that the fund intended for the KSS Project in the amount of P100 Million Pesos (*sic*) be deemed as "Confidential Fund".

x x x [T]he liquidation of accused Zagala's account, which was

contained in a Journal Voucher dated November 27, 1984, was without any supporting documents. Upon this discovery, witness requested and secured a certification from the Manager of the National Government Audit Office to the effect that the COA did not receive any document coming from the MHS. However, this liquidation voucher which contained figures in the total amount of P50 Million Pesos (*sic*), comprised the entire cash advances of accused Zagala in the amount of P40 Million Pesos (*sic*) and the P10 Million Pesos (*sic*) cash advance made by accused Dulay. Since the amount of P10 Million Pesos (*sic*) was already contained in Zagala's Journal Voucher, the witness and her team of auditors tried to locate the remaining P10 Million Pesos (*sic*) and found out that accused Dulay had liquidated the same amount.^[6] (footnotes omitted)

According to COA Auditor Cortez, Zagala's cash advances were supported by a liquidation report and supporting documents submitted to the resident auditor even before the P100 Million Kilusang Sariling Sikap (KSS) fund was made confidential.^[7] The witness also testified that the COA resident auditor found no irregularity in this liquidation report.^[8]

COA Auditor Cortez stated that since the P100 Million KSS fund was classified as confidential, the liquidation report should have been submitted to the COA Chairman who should have then issued a *credit memo*. No *credit memo* was ever found during the audit examination of the MHS accounts.^[9] COA Auditor Cortez admitted that she did not verify whether the supporting documents of Zagala's cash advances were sent to the COA Chairman.^[10]

Respondent Marcos was prosecuted because of her participation as Minister of the MHS, in requesting that the P100 Million KSS fund be declared confidential. Respondent Benitez was prosecuted because he was the approving officer in these disputed transactions.

In Criminal Case No. 20346 -

Regarding the Kabisig Program of the MHS, the COA team of auditors examined the vouchers of the MHS, which upon inspection revealed that there were at least three (3) memoranda of agreements entered into between the MHS and University of Life (UL). With reference to the first Memorandum of Agreement dated July 2, 1985, an amount of P21.6 Million Pesos (*sic*) was transferred by the MHS to the UL to pay for the operations of the Community Mobilization Program and the Kabisig Program of the MHS. Accused Benitez as the Deputy Minister of the MHS and accused Dulay as Vice President of the UL were the signatories of this agreement. Although there is no disbursement voucher in the records, it is admitted that a Treasury Warrant was drawn in the sum of P21.6 Million Pesos (*sic*). The second Memorandum of Agreement dated July 10, 1985 provided for a fund transfer in the amount of P3.8 Million Pesos (*sic*) for the Human Resources Development Plan of the MHS. Accordingly, a Disbursement Voucher certified by accused Dulay and approved by accused Benitez was drawn in the sum of P3.8 Million Pesos

(sic). The third Memorandum of Agreement in the sum of P17 Million Pesos (sic) was granted for the acquisition of motor vehicles and other equipment to support the Kabisig Program of the MHS. For that reason, a Disbursement Voucher pertaining thereto accompanied by a Treasury Warrant was drafted.

Similarly, the witness declared that although they did not examine any of the records of the UL, the abovementioned sums were not received by the UL based on the affidavit of the UL Comptroller named Pablo Cueto. In the same way, an affidavit was executed by the UL Chief Accountant named Ernesto Jiao attesting that there is no financial transaction on record covering the purchase of motor vehicles. Again, witness Cortez admitted that they did not examine the books of the UL on this matter but only inquired about it from Mr. Jiao. The affidavit of Mr. Jiao with respect to the nonexistence of the purchases of motor vehicles was further corroborated by the affidavit of one Romeo Sison, who was the Administrative Assistant of the Property Section of the UL.

The respective treasury warrants representing the various sums of P21.6 Million Pesos (sic), P17 Million Pesos (sic) and P3.8 Million Pesos (sic) were subsequently deposited with the United Coconut Planters' Bank (UCPB), Shaw Blvd. Branch, Mandaluyong, under various accounts. Soon after, several checks were drawn out of these funds as evidenced by the Photostat copies recovered by the COA auditors. In the course of the testimony of the witness, she revealed that her team of auditors classified said several checks into different groups in accordance with the account numbers of the said deposits.

x x x [T]he amount of P3.8 Million Pesos (sic), the same was intended for the Human Resource Development Plan of the UL. x x x [T]he aforesaid amount is not a cash advance but rather paid as an expense account, which is charged directly as if services have already been rendered. Hence, UL is not mandated to render liquidation for the disbursement of P3.8 Million Pesos (sic).

The sums of P21.6 Million Pesos (sic) and P17 Million Pesos (sic) were deposited under x x x the name of the UL Special Account. Out of these deposits, the following first sequence of withdrawals of checks^[11] payable either to its order or to cash x x x reached a total sum of P5,690,750.93 Million Pesos (sic).

The second list of checks^[12] [which] consists of numerous [Manager's] Checks x x x reached the amount of P18,416,062.15.

A third set of checks allegedly consists of nine (9) ordinary checks and two (2) manager's checks in the sum of P1,971,568.00 and P4,566,712.18[,] respectively. x x x

Moreover, [a] witness confirmed that as regards the amount of P17 Million Pesos (sic) intended for the acquisition of motor vehicles, P10.4 Million Pesos (sic) was spent for the purchase of some five hundred (500)