

THIRD DIVISION

[G.R. No. 166847, November 16, 2011]

**GUILLERMO E. CUA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

In this petition for review, Guillermo E. Cua (*petitioner*) questions the June 8, 2004 Decision^[1] and January 13, 2005 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR. No. 24608, which affirmed with modification the September 21, 1999 Decision^[3] of the Regional Trial Court, Branch 72, Olongapo City (*RTC*), in Criminal Case No. 84-96, finding him guilty of the crime of malversation of public funds. The Information indicting the petitioner reads:

That on or about the 29th day of June, 1994 or on dates prior thereto, in Olongapo City and within the jurisdiction of this Honorable Court, the above-named accused, being then an accountable officer for public funds as Revenue Collection Agent of Bureau of Internal Revenue, Revenue Region No. 4, Olongapo City, and having received tax collections in the total amount of P340,950.37 for the months of January to June 1994, did then and there willfully, unlawfully and feloniously, appropriate, take or misappropriate a portion of said tax collections in the amount of P291,783.00 for his own personal use and benefit and despite demand made on him by the Commission on Audit, Regional Office No. III, San Fernando Pampanga, to pay or return the said amount, the said accused refused and failed and still refuses and fails to pay or return the said amount of P291,793.00, to the damage and prejudice of the government.

CONTRARY TO LAW.^[4]

The Facts

On June 29, 1994, a regular audit was conducted on the cash account and accountable forms of petitioner, then a Revenue Collection Agent of the Bureau of Internal Revenue (*BIR*) in Olongapo City.^[5]

Remedios Soto (*Soto*), resident Auditor of the BIR in San Fernando, Pampanga, assigned two of her staff members, Alfredo Malonzo (*Malonzo*) and Virginia Santos (*Santos*),^[6] to examine the cash account inventory of accountable forms, cash book and transactions of petitioner from December 2, 1993 to June 29, 1994.^[7]

The initial findings of said audit, based on the documents and cash produced by petitioner, revealed no cash shortage on his account. The accountable forms

consisting of Revenue Official Receipts and the documentary stamps were complete and intact. Based on petitioner's cash book, all his collections were remitted to the Philippine National Bank (PNB).^[8] The total amount of P340,950.37, for which petitioner was accountable,^[9] appeared to have been deposited at the PNB, Olongapo City Branch, as evidenced by the deposit slips and official receipts issued by the PNB, which were attached to the record kept by petitioner.^[10]

As part of the examination process, however, a confirmation from the government depository bank is required to verify the initial audit.^[11] Thus, on July 14, 1994, Soto sent a letter^[12] to the depository bank, PNB, requesting confirmation or verification of the authenticity of the official receipts and deposit slips attached to the collection reports of petitioner.^[13]

In a reply dated August 24, 1994, PNB returned the letter-request with a notation that the amounts stated in three of the official receipts did not tally with their records, that the official receipt numbers should be specified to facilitate verification of the other deposit slips, and that petitioner had not made any deposit from June 8 to 27, 1994.^[14]

Soto proceeded to the PNB to discuss the matter with Florida Francisco (Francisco), the State Auditor assigned at the Olongapo City Branch, who checked and verified the official receipts and deposit slips presented by petitioner.^[15]

In his Letter-reply^[16] dated February 17, 1994, addressed to Soto, Felixberto De Guzman (De Guzman), Department Manager of the PNB Olongapo City Branch, detailed the discrepancies in the amounts stated in the actual receipts in the possession of the PNB and the amounts stated in the receipts as reported by petitioner as follows:

Please take note of the following discrepancies on the amount of the actual receipts and the amount of receipts as reported:

| PNB NO. | OR DATE | AMOUNT REPORTED | AMOUNT OF ACTUAL RECEIPT |
|---------|---------|-----------------|--------------------------|
| 977793 | 1/13/94 | P163,674.87 | P12,574.87 |
| 975653 | 2/04/94 | 31,407.00 | 3,183.00 |
| 976408 | 3/30/94 | 25,120.00 | 6,075.00 |

I further certify the authenticity of deposit slip with deposit number 94-4 dated May 31, 1994 in the amount of P10,929.50. However, the rest of the deposit slips reported were not actually transacted in this office and are considered void, as follows:

| DEPOSIT SLIP | AMOUNT | DATE |
|-----------------------|------------|---------|
| Deposit Slip No. 94-5 | P25,304.00 | 6/8/94 |
| Deposit Slip No. 94-6 | 33,305.00 | 6/10/94 |
| Deposit Slip No. 94-7 | 18,282.00 | 6/16/94 |
| Deposit Slip No. 94-8 | 13,801.00 | 6/24/94 |
| Deposit Slip No. 94-9 | 2,772.00 | 6/27/94 |

Soto prepared a letter of demand^[17] dated August 23, 1994, which contained a summary of the discrepancies as noted by the PNB, and disclosed that petitioner had incurred a cash shortage amounting to P291,783.00.^[18] Soto then requested petitioner to come to her office to personally receive the demand letter.^[19]

Petitioner then wrote a reply letter^[20] dated August 23, 1994, addressed to the resident auditor, admitting his cash shortage purportedly to get even with the BIR which failed to promote him but promised to pay the amount as soon as possible.^[21]

Thereafter, a special arrangement was made between the BIR and petitioner, wherein the BIR would withhold the salary of petitioner and apply the same to the shortage incurred until full payment of the accountability was made.^[22]

Notwithstanding, the Information dated March 6, 1996, was filed against petitioner before the RTC. Upon arraignment on August 9, 1996, petitioner pleaded not guilty.

The Ruling of the RTC

During trial, the prosecution presented Soto, Santos, Francisco, and Dolores Robles^[23] as its witnesses. Petitioner, on the other hand, did not take the witness stand, and opted instead to submit documentary evidence showing that he had paid for the shortage by means of deductions from his salary in the total amount of P291,783.00.^[24]

Giving credence to the evidence of the prosecution, and finding that payment of the amount malversed was not a defense, the RTC convicted petitioner as charged. It did, however, consider restitution of the malversed amount as a mitigating circumstance. The dispositive portion of the RTC Decision dated September 21, 1999, reads:

WHEREFORE, in view of the foregoing considerations, the Court finds the accused Guillermo Cua guilty beyond reasonable doubt of the crime of Violation of Article 217 of the Revised Penal Code for Malversation of Public Funds and hereby sentences him to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY to TWENTY (20) YEARS of Reclusion Temporal and to suffer perpetual special disqualification to hold public office.

SO ORDERED.^[25]

The Ruling of the CA

On appeal to the CA, petitioner argued that the special arrangement with the BIR was synonymous to an absolution of his criminal liability, and the State had, in effect, pardoned him. The CA, however, held that restitution only extinguished petitioner's civil liability but not his criminal liability. It, thus, agreed with the RTC in finding that petitioner's guilt was proven beyond a reasonable doubt. Nonetheless,

the CA found that the RTC failed to apply the Indeterminate Sentence Law and to impose the corresponding fine as provided in Article 217 of the Revised Penal Code, and thus, modified the penalty accordingly. The dispositive portion of the assailed CA Decision dated June 8, 2004, is as follows:

WHEREFORE, premises considered, the instant appeal is DENIED. However, the 21 September 1999 Decision of the Regional Trial Court of Olongapo City, Branch 72 is accordingly MODIFIED in that accused-appellant Guillermo E. Cua is hereby sentenced to suffer an indeterminate sentence of ten (10) years and one (1) day as minimum to seventeen (17) years, four (4) months and one (1) day as maximum and to pay a fine of Two Hundred Ninety One Thousand Seven Hundred Eighty Three Pesos (P291,783.00).

SO ORDERED.^[26]

After his motion for reconsideration was denied, petitioner filed this petition for review.

Issue

Petitioner raises the sole issue of:

WHETHER OR NOT THE PROSECUTION PROVED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

Petitioner argued that the CA failed to sift, evaluate, and properly weigh the evidence adduced by the prosecution. Had it done so, he posited that the CA could have established that (a) there is not a single iota of evidence to sustain the charge of malversation of public funds against petitioner; and (b) the prosecution itself, admitted, by its own evidence, that the petitioner remitted to the PNB for deposit the alleged shortage.

Petitioner averred that the prosecution admitted the authenticity of the PNB official receipts, deposit slips, and remittance advices which petitioner submitted for audit, when it offered them in its formal offer of evidence "to prove that petitioner collected the said amounts and deposited the same to the PNB Olongapo Branch." Furthermore, he pointed out that De Guzman contradicted himself when he enumerated the discrepancies because he had actually confirmed the authenticity of the aforementioned PNB documents in his letter-reply to the BIR dated November 17, 1994, which stated that he was "confirming the authenticity" of the said documents.

Petitioner, thus, contended that he did, in fact, deposit the full amount of his accountability. He attributed the discrepancy between the amounts he deposited and the amounts actually received by the PNB to an irregularity within the PNB. He suggested that the bank teller might not have reported to the bank the entire amounts received from him.

Petitioner goes on to highlight that all the deposit slips were stamped "RECEIVED/DEPOSITED CASH DIVISION PNB-OLONGAPO." He noted that De Guzman, the PNB employee who prepared the PNB letter outlining the discrepancies, was not called to the stand by the prosecution to testify. He argued that Francisco, who noted the said letter, was not competent to testify on it as she was not the one who prepared it.

Petitioner also contended that adding all the amounts in the official receipts and deposit slips, his total accountability is only P332,961.37, and not P340,950.37. Thus, the BIR overcalculated his total accountability by P7,989.00.

Finally, petitioner claimed that the settlement of the shortage was forced upon him by the Commission on Audit (COA), and not a voluntary arrangement. He averred that Soto requested the BIR to withhold his salary and apply the same to the shortage, without his consent.

The Ruling of the Court

The Court finds petitioner's arguments to be devoid of merit.

At the outset, it should be stressed that in a petition for review under Rule 45 of the Rules of Court, only questions of law may be raised. Thus, questions of fact are not reviewable. It is not the Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. As such, a question of law must not involve an examination of the probative value of the evidence presented by the litigants. The resolution of factual issues is the function of lower courts, whose findings on these matters are accorded respect.^[27]

A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Thus, the issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.^[28]

Petitioner raises the sole issue that the prosecution failed to establish his guilt beyond reasonable doubt on the ground that the evidence shows that he did not incur a shortage of ₱291,783.00. He argues that as an exception to the rule that factual findings and conclusions of the CA are binding on this Court, the CA plainly overlooked certain facts of substance and value which, if considered, would alter the result of the case.

The Court disagrees.

The resolution of the issue raised by petitioner necessarily requires the re-evaluation of the evidence presented by both parties. This is precisely a question of fact proscribed under Rule 45. Petitioner has failed to establish that the present case falls under any of the exceptions^[29] to said rule. On the other hand, the factual findings of the RTC were affirmed by the CA, and as such, are final and conclusive