

## FIRST DIVISION

[ G.R. No. 165781, June 05, 2009 ]

**RAUL S. TELLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before the Court is a petition for review on certiorari<sup>[1]</sup> assailing the Decision<sup>[2]</sup> promulgated on 19 March 2004 and the Resolution<sup>[3]</sup> promulgated on 1 September 2004 of the Sandiganbayan in Criminal Case No. 15006.

#### The Antecedent Facts

Raul S. Tello (petitioner) was a Telegraph Operator and Telegraphic Transfer-in-Charge of the Bureau of Telecommunications in Prosperidad, Agusan del Sur. On 5 December 1986, Lordino Tomampos Saligumba (Saligumba), Commission on Audit Auditor II assigned at the office of the Provincial Auditor of Agusan del Sur, received an order directing him and Dionisio Virtudazo (Virtudazo) to conduct an audit examination of petitioner's accounts. Saligumba and Virtudazo (the auditors) conducted an audit from 8 to 10 December 1986 where it was initially determined that petitioner had a shortage in the total amount of P6,152.90. When the auditors questioned petitioner on the official receipts of the bank to confirm the remittance advices, petitioner informed them that they were sent to the regional office of the Bureau of Telecommunications. Saligumba wrote the unit auditor of the Philippine National Bank (PNB), San Francisco, Agusan del Sur branch, requesting for confirmation of petitioner's remittances and a list of validated remittances from 1 January to 9 December 1986. In a letter dated 10 December 1986, PNB's branch auditor informed Saligumba that petitioner did not make any remittance to the bank from 31 July 1985 to 30 October 1986. Saligumba secured copies of the official receipts and compared them with the remittance advices submitted by petitioner and found that the bank's official receipts did not correspond with petitioner's remittance advices.

The auditors found that the total shortage incurred by petitioner amounted to P204,607.70.

Saligumba wrote petitioner a letter dated 11 December 1986 outlining the results of the examination and demanding the immediate production and restitution of the missing amounts. However, petitioner failed to submit his explanation and to produce or reconstitute the missing funds. Petitioner also failed to show in his office starting 8 December 1986.

Petitioner was charged before the Sandiganbayan with malversation of public funds under Article 217 of the Revised Penal Code (RPC), thus:

That on or about and prior to December 11, 1986, in Prosperidad, Agusan del Sur and within the jurisdiction of this Honorable Court, accused, a public employee, being then a Telegraph Operator and Telegraphic Transfer-In-Charge of Prosperidad, Agusan del Sur, Bureau of Telecommunication[s,] and as such accountable for the public funds collected and/or received by him, with grave abuse of confidence, did then and there, wilfully and unlawfully misappropriate, embezzle and convert for his own personal use and benefit from said funds the amount of P219,904.05 to the damage and prejudice of the government in the afore-stated amount.

CONTRARY TO LAW.<sup>[4]</sup>

Petitioner did not present any testimonial evidence for his defense. He only manifested that as far as he was concerned, the initial findings of the auditors showed only a shortage of P6,152.90. He disputed the initial and final findings of the auditors for being unreliable. Petitioner further alleged that as an acting telecom operator, he was not an accountable officer.

### **The Ruling of the Sandiganbayan**

In its 19 March 2004 Decision, the Sandiganbayan found petitioner guilty beyond reasonable doubt of malversation of public funds. The Sandiganbayan ruled that the prosecution was able to establish the elements of the crime, thus:

1. that the offender is a public officer;
2. that he has the custody and control of funds or property by reason of the duties of his office;
3. that the funds or property are public funds or property for which he is accountable; and
4. that he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.

The Sandiganbayan held that while petitioner disputed the amount of the shortage, he did not deny that he incurred the shortage. The Sandiganbayan further noted that when the auditors examined the cashbooks and found the shortage, petitioner did not show up for work anymore. Neither did petitioner question the cash examination report. The Sandiganbayan stated that it took petitioner almost three years before he submitted himself to the jurisdiction of the court, and it was only because he was arrested in another province.

However, the Sandiganbayan modified the amount of shortage to P204,607.70 instead of P219,904.05 in the information.

The dispositive portion of the Sandiganbayan's decision reads:

WHEREFORE, judgment is hereby rendered finding the accused, Raul S. Tello, guilty beyond reasonable doubt of the crime of Malversation defined in and penalized by Article 217 of the Revised Penal Code, as amended, and he is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day of *reclusion temporal* minimum, as the minimum penalty, to eighteen (18) years and one (1) day of *reclusion temporal*, maximum, as the maximum penalty, there being no mitigating or aggravating circumstance attendant to the commission of the crime. Accused is further sentenced to suffer the penalty of perpetual special disqualification and is likewise ordered to pay a fine equivalent to the amount malversed or the amount of P204,607.70, and to indemnify the Bureau of Telecommunications the amount of P204,607.70 with interest thereon.

Costs against the accused.

SO ORDERED. <sup>[5]</sup>

Petitioner filed a motion for reconsideration assailing his conviction and arguing that the Sandiganbayan's decision was void because it was rendered and promulgated after nine years and five months from the time it was submitted for decision.

In its 1 September 2004 Resolution, the Sandiganbayan denied petitioner's motion for lack of merit. The Sandiganbayan ruled that the right to speedy disposition of cases, which petitioner invoked for the first time in the motion for reconsideration, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. There was no violation when petitioner failed to seasonably establish his right.

Hence, the petition before this Court.

### **The Issues**

The issues in this case are the following:

1. Whether petitioner is guilty beyond reasonable doubt of the crime of malversation of public funds under Article 217 of the RPC;
2. Whether Saligumba has authority to conduct the audit examination; and
3. Whether petitioner was denied his constitutional right to a speedy disposition of his case.

### **The Ruling of this Court**

The petition has no merit.

### ***Malversation of Public Funds***