

THIRD DIVISION

[G.R. No. 173360, March 28, 2008]

**LT. COL. PACIFICO G. ALEJO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision^[1] dated 31 January 2006 of the Sandiganbayan, Fifth Division in A/R No. 064 which affirmed the Decision^[2] dated 26 July 2002 of the Regional Trial Court (RTC) of Palayan City, Branch 40, finding petitioner Lieutenant Colonel (Lt. Col.) Pacifico G. Alejo guilty of Malversation of Public Property punishable under paragraph 4, Article 217 of the Revised Penal Code.

On 29 December 1994, petitioner was charged before the RTC with the crime of Malversation of Public Property, allegedly committed as follows:

That on or about June 8, 1992, in Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the said accused, a public officer, being then the Commanding Officer of the Real Estate Preservation Economic Welfare Center, and accountable for confiscated illegal logs he received by reason of his position and office, did then and there, willfully, unlawfully and feloniously, and with grave abuse of confidence, misappropriate, embezzle and take away 1,000 board feet of logs confiscated by elements of the 56th IB, 7th ID, PA, valued at P20,000.00 Philippine Currency and converted for his own personal use and benefit, to the damage and prejudice of the government.^[3]

When arraigned on 22 November 1995, petitioner pleaded not guilty.

It appears that petitioner was also charged with two different crimes, namely, Violation of Section 3(e) of Republic Act No. 3019 and Direct Bribery, which were allegedly interrelated with the malversation case. Thus, during the hearing on 6 June 1996, petitioner's counsel moved that the two other cases filed against him, *i.e.*, for direct bribery and violation of Section 3(e) of Republic Act No. 3019, be jointly tried with the malversation case. The RTC granted the motion for joint trial.

At trial, the prosecution presented the following witnesses: (1) Colonel Gerardo Lantoria, Deputy Chief of Office, Office of Ethical Standards and Public Accountability, Judge Advocate General's Office (JAGO), who received the complaint against petitioner, had the said complaint investigated, and was the one who prepared the Affidavit-Complaint against petitioner after the Chief of Staff of the Philippine Army recommended the elevation of the case to the Ombudsman for preliminary investigation; (2) Lieutenant Rodolfo Estremos, then a master sergeant

and a subordinate of petitioner, who testified that he loaded and brought the 1,000 board feet of confiscated logs to the house of petitioner upon the latter's instruction; (3) Sergeant Nelson Flores, who was the driver of the truck used in transporting the confiscated logs to petitioner's house; and (4) Amrodin Sultan, then the Commander of Atate Detachment where the logs were stored, testified that Estremos took the logs from the detachment after Sultan gave his consent upon being informed that such was upon the order of petitioner who was a superior officer.

As gathered from the combined testimonies of the prosecution witnesses, the prosecution was able to establish that at the time of the commission of the crime, petitioner was the Commanding Officer of the Real Estate Preservation Economic Welfare Center (REPEWC), 7th Infantry Division, Philippine Army, Palayan City. As a higher unit, REPEWC controls smaller units, one of which is Task Force *Sagip Likas Yaman* (TFSLY). TFSLY is composed of the military, as the armed component, and the Office of the Community Environment and Natural Resource of the Department of Environment and Natural Resources (DENR), as the civilian element, in the drive against illegal logging. Petitioner was the Task Force Commander of the TFSLY. Being the commanding officer of the REPEWC and the task force commander of the TFSLY, petitioner was involved in the anti-illegal logging campaign. Witnesses Rodolfo Estremos, Amrodin Sultan, and Nelson Flores were among his subordinates.

To further strengthen the anti-illegal campaign, the DENR- Region III Office and the 7th Infantry Division (7th ID) of the Philippine Army entered into a Memorandum of Agreement (MOA) on 23 September 1991, wherein it was agreed upon, *inter alia*, that the 7th ID would accept custody of confiscated mineral and forest products, tools, equipment and conveyances for safekeeping.^[4]

On 8 June 1992, there were 46 logs, measuring about 10 to 12 meters, stockpiled at Atate Detachment, the detachment which was primarily created to confiscate illegally-transported logs. The confiscated logs were valued at P20,000.00 per stipulation of the counsel of the accused.^[5] On the same day, Amrodin Sultan, the Detachment Commander thereof, was notified by Rodolfo Estremos that petitioner instructed him to load the confiscated lumber into a 6x6 truck driven by Nelson Flores. When the confiscated logs were loaded, Flores and Estremos drove to petitioner's house at Sto. Domingo, Nueva Ecija, and unloaded the said logs in the presence of the petitioner, his wife and mother-in-law.

Rodolfo Estremos executed an Affidavit against petitioner dated 15 July 1992, while Amrodin Sultan and Nelson Flores executed their respective affidavits on 16 July 1992 before Captain Simeon T. Infante of the Division Headquarters, 7th ID, Fort Magsaysay, Palayan City. The affidavits contained declarations that they delivered the confiscated lumber to the residence of the petitioner.

The defense, on the other hand, presented petitioner and Romeo Buenaventura, the then Community Environment and Natural Resources Officer. Petitioner denied the allegations against him. He declared that he knew the prosecution witnesses who were his subordinates. He asserted that prosecution witnesses Rodolfo Estremos and Amrodin Sultan testified against him because they were intimidated by people in the military's higher echelon, one of whom was a certain General Soriano. He claimed that these witnesses executed affidavits sometime in July of 1993 repudiating their earlier affidavits accusing him of taking the confiscated logs for his benefit.

Romeo Buenaventura testified that on 7 December 1992, he executed a citation of commendation for petitioner for the latter's support in the campaign against illegal logging.

On 26 July 2002, the RTC rendered a decision acquitting petitioner of the crimes of direct bribery and violation of Section 3(e) of Republic Act No. 3019, but convicting him of the crime of Malversation of Public Property. The relevant decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered:

x x x x

2.) Finding the accused GUILTY beyond reasonable doubt of the crime of Malversation of Public Property corresponding to Criminal Case No. 0639-P. Considering that the subject lumber is valued at TWENTY THOUSAND PESOS (P20,000.00), the imposable penalty under Article 217 (4) of the Revised Penal Code is Reclusion Temporal in its medium period which is 14 yrs., 8 months and 1 day to 17 yrs. and 4 mos. Applying the Indeterminate Sentence Law, in the absence of any mitigating or aggravating circumstance, the Court hereby sentences the accused, LTC. PACIFICO G. ALEJO, to suffer imprisonment of eight (8) years and one (1) days as minimum to seventeen (17) years as maximum. The accused is furthermore ordered to pay the State the amount of TWENTY THOUSAND PESOS (P20,000.00) representing the value of the lumber misappropriated as well as the costs of suit.^[6]

On 4 September 2002, petitioner filed a Motion for Reconsideration and/or to Reopen the Proceedings. Petitioner contended that the evidence for the prosecution failed to show that he was an accountable officer of the subject lumber; thus, he could not be liable for the crime of malversation of public property.

The RTC, without the objection of the prosecution, ordered the reopening of the case for the presentation of additional evidence.

On 31 July 2003, the defense presented witness Atty. Hermilo Barrios, the Deputy JAGO of the 7th ID in 1991-1993. He testified that he prepared the 23 September 1991 MOA entered into by the 7th ID of the Philippine Army and DENR, Region III. According to him, it was the DENR that gave the orders to the military component to confiscate and seize illegal logs. The military component had no authority and accountability with respect to the confiscated vehicles and forest products that were being seized. He said that the military compound was used only as impounding area, inasmuch as the DENR was ill-equipped to accommodate the numerous logs seized during the anti-illegal logging campaign.^[7] He stated further that it was the DENR that had total control of the impounding area.^[8]

On 25 September 2003, the prosecution presented Atty. Salome Cansino, Chief Legal Counsel of the DENR when the MOA was executed. She testified that based on the MOA, whenever apprehension or confiscation was made by the TFSLY, the forest products or equipment would be placed in the custody of the REPEWC or the 7th ID

depot. She stressed that the disposition of these forest products lies with the DENR which would evaluate and determine the legality of said products.^[9] The military component of the task force, therefore, cannot release the confiscated products without the authority from the DENR.^[10]

In an order dated 2 October 2003, the RTC denied the motion for reconsideration and affirmed its decision dated 26 July 2002, convicting petitioner of the crime of malversation.

Dissatisfied by the ruling of the RTC, petitioner elevated the case to the Sandiganbayan.

In a decision dated 31 January 2006, the Sandiganbayan affirmed the decision of the RTC convicting petitioner of the crime of malversation, *viz*:

In view of all the foregoing, we hereby affirm the decision of the lower court finding the accused guilty beyond reasonable doubt of the crime of malversation. However, after applying the Indeterminate Sentence Law in the absence of any aggravating and mitigating circumstance, the penalty imposed by it should be modified to TEN (10) YEARS AND ONE (1) DAY prision mayor as minimum, to SIXTEEN (16) YEARS, FIVE (5) MONTHS AND ELEVEN (11) DAYS of *reclusion temporal*, as maximum; perpetual special disqualification; and to pay a fine of Php20,000.00 equal to the amount malversed, and the costs of the suit.^[11]

Petitioner filed a motion for reconsideration which was denied by the Sandiganbayan in its resolution dated 26 June 2006.

Hence, the instant petition.

Petitioner maintains that the prosecution failed to discharge its burden of proving his guilt beyond reasonable doubt. Petitioner asserts that the testimonies of prosecution witnesses Rodolfo Estremos, Amrodin Sultan and Nelson Flores should be appreciated with careful scrutiny since these witnesses were pressured or intimidated by General Soriano to testify against him and considering that before they took the witness stand, they had already executed their respective affidavits recanting their accusations against petitioner. Their act of taking the witness stand and reviving the accusations against petitioner become suspect in view of the fact that they are being used by General Soriano to pin him down.

Aside from the bare testimonies of Estremos, Sultan and Flores, petitioner claims that the prosecution failed to present any documentary evidence showing that the confiscated logs actually existed and were included in the inventory of the DENR as confiscated logs, which were turned over to the custody of the TFSLY and which were subsequently lost. Petitioner insists that the audit or inventory of confiscated logs under the possession and custody of the TFSLY is crucial to the case and in the absence thereof, the charge of malversation must fail. He adds that the prosecution's failure to establish that there were indeed confiscated logs could mean acquittal. If indeed these logs exist, it cannot be considered vested with public character absent proper documentation of confiscation pursuant to the MOA. Since the logs were not vested with public character, he said he cannot be considered as an "accountable officer" within the purview of Article 217 of the Revised Penal Code.

Moreover, he avers that the prosecution failed to prove the actual value of the confiscated logs.

Petitioner also capitalizes on the inconsistencies of the prosecution witnesses on the quantity of the lumber or logs that were misappropriated. He points out that witness Estremos's testimony conflicts with that of witness Flores because the former said the logs were unloaded in the presence of the wife of the petitioner and his mother-in-law, while the latter stated that unloading was done in the presence of the accused only. This glaring inconsistency, petitioner stresses, shatters the credibility of the prosecution witnesses.

In the main, petitioner wants this Court to weigh the credibility of the prosecution witnesses *vis-a-vis* that of the defense witnesses. It has often been said, however, that credibility of witnesses is a matter best examined by, and left to, the trial courts. ^[12] When the factual findings of the trial court are affirmed by the appellate court, the general rule applies.^[13] This Court will not consider factual issues and evidentiary matters already passed upon. The petitioner raises the same issues he brought before the appellate court which gave credence to the findings and decision of the trial court.

Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case.^[14] The assessment by the trial court of the credibility of a witness is entitled to great weight. It is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.

In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact of value for us to overturn the findings of the trial court.

The prosecution, through the testimonies of the key witnesses Rodolfo Estremos, Nelson Flores, and Amrodin Sultan, was able to establish beyond reasonable doubt the existence of the elements of the crime hurled against petitioner.

Malversation of public property is defined and penalized under Article 217 of the Revised Penal Code, the pertinent provisions of which read:

Art. 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, 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 twelve thousand pesos but