

SECOND DIVISION

[G.R. NO. 162212, January 30, 2007]

**GABRIEL L. DUERO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND THE HON. SANDIGANBAYAN (FIRST
DIVISION), RESPONDENTS.**

DECISION

QUISUMBING, J.:

From the *Sandiganbayan* Resolution^[1] dated February 17, 2004, denying the Motion for Reconsideration of the *Sandiganbayan* Decision^[2] dated June 6, 2003 in Criminal Case No. 11999, petitioner Gabriel L. Duero filed the instant appeal. The *Sandiganbayan* had found petitioner guilty of Malversation of Public Funds, and sentenced him (a) to an indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to ten (10) years and one (1) day of *prision mayor* as maximum, (b) to pay a fine of P46,602.54, and (c) to suffer special perpetual disqualification from holding public office.^[3]

The facts as culled from the records are as follows:

On March 9, 1981, the Commission on Audit (COA) Regional Director for Region XI ordered the examination of the cash and accounts of the Municipal Treasurer and all other accountable officers of, among others, Tandag, Surigao del Sur.^[4] On March 16, 1981, the Special Audit Team No. 1^[5] went to petitioner's office, as then Municipal Treasurer of Tandag, to conduct an audit of his cash and accounts from June 3, 1980 to March 16, 1981. The audit team made the examination from March 16 to May 26, 1981. They stayed in petitioner's office for one week but completed the review of the documents in their regional office in Davao City. They returned to Tandag from time to time during the said period.

As testified to by witnesses, Alberto J. Sta. Cruz and Fe B. Ileteo, initially, petitioner's cash and accounts as appearing in his Books of Account yielded an overage of P1,648.02.^[6] Upon verification, however, it appeared that certain infrastructure funds from the Ministry of Public Works and Highways (MPH)^[7] and interest earned on the municipality's time deposit with the Philippine National Bank (PNB) were not entered by petitioner in his Books of Account. As a result, the audit team amended petitioner's cash accountability and declared these items as missing funds.

On May 4, 1981, Sta. Cruz sent a written demand to petitioner to produce P339,375.34 and to "take up [sic] same into account."^[8] Upon verification with the PNB though, the audit team found that the P277,882.01 consisted of simulated deposits and withdrawals that cancelled each other out.^[9] Hence, Sta. Cruz sent another written demand to petitioner on May 26, 1981, for the reduced amount of

P70,993.33.^[10]

On even date, the audit team submitted to the Regional Director the *Reports of Examination of the Cash and Accounts* of petitioner. Sta. Cruz submitted also a *Narrative Report*.^[11] In both documents, however, the petitioner's accountability was further reduced to P63,993.33 after the audit team discovered that it was the Provincial Treasurer who received the P7,000 as infrastructure fund. Sta. Cruz informed the Regional Director that the report was not submitted earlier because the audit team had to verify and re-verify the figures since it involved collections that were not recorded in the Books of Account. Based on the audit team's findings, Sta. Cruz recommended, among others, petitioner's criminal prosecution for malversation of public funds.

On November 18, 1986, the *Tanodbayan* Special Prosecutor filed with the *Sandiganbayan* an Information^[12] charging petitioner Gabriel L. Duero with Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, committed as follows:

That on or [about] the period comprising the year 1980 to 1981, in the municipality of Tandag, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the aforesaid accused being then the Municipal Treasurer of the said municipality, and as such accountable for funds received and collected by him by reason of his office, did then and there, with intent to defraud the government, wilfully, unlawfully and feloniously, with grave abuse of confidence and by taking advantage of his official position, take and appropriate for his own personal use and benefit the amount of Forty Four Thousand Three Hundred Twenty Four Pesos and Five Centavos (P44,324.05), to the damage and prejudice of the government.

Contrary to law.^[13]

Upon arraignment on June 17, 1988, the petitioner entered a plea of not guilty.^[14]

While the case was pending with the *Tanodbayan*, petitioner filed an Urgent Motion for Reinvestigation/Reconsideration on December 10, 1986.^[15] On December 16, 1986, the *Tanodbayan* granted the motion.^[16] As a result, the COA regional office required Sta. Cruz to comment on the petitioner's request. On April 13, 1987, Sta. Cruz submitted his *1st Indorsement*^[17] where petitioner's accountability was further reduced to P46,602.54, after deducting the amounts of P9,890.79 and P7,500, as additional interest earned from the time deposit and purchase of a motor vehicle, respectively.

In his testimony, witness Sta. Cruz revealed that he included certain items^[18] amounting to P2,202.72 in petitioner's accountability. However, the *Tanodbayan* Special Prosecutor deducted these items thereby reducing petitioner's accountability to P44,324.05, as appearing in the Information.^[19]

The defense presented petitioner himself, Winifredo A. Perez,^[20] and Timoteo T. Orquina,^[21] as its witnesses during the trial.

Petitioner admitted that the shortage represented certain infrastructure funds from the MPH and unrecorded interest earned on the municipality's time deposit with the PNB,^[22] which he used to disburse cash advances to the municipality's employees and officials. He said that instead of recording the infrastructure funds in the cashbook, he entered it as accounts receivable in his *Post Closing Trial Balance as of December 31, 1980*.^[23] Further, he did not reflect the funds in his Books of Account because he knew that cash advances are not considered as legitimate disbursements by the auditors. Petitioner also testified that other than the vale slips, the only evidence he had that the municipality's employees and officials made cash advances, were the demand letters he sent to them. Nevertheless, petitioner claimed that all the cash advances were eventually paid after the audit and he had remitted the amount to the Municipal Treasurer.^[24] He restituted the amount on his own first because he knew that the municipality's employees and officials who were liable therefor would pay him once they were able.

Perez testified that since the salaries of municipal officials often came late, petitioner allowed them to make cash advances evidenced by vale slips. Petitioner returned their *vale* slips only after their cash advances have been deducted from their salaries. Sometimes, petitioner allowed them to make additional cash advances although he had not yet liquidated their previous cash advances.

Orquina testified that petitioner allowed him to make cash advances for which he signed *vale* slips. Based on their computation, the two had advanced approximately P9,000 each. On May 8, 1981, they received separate written demands from petitioner demanding payment of their cash advances. Perez paid P8,500, while Orquina paid P7,500. Petitioner returned their vale slips but they could no longer locate it.

On June 6, 2003, the *Sandiganbayan* promulgated its decision finding petitioner guilty beyond reasonable doubt of malversation of public funds. Its dispositive portion reads as follows:

WHEREFORE, in view of the foregoing, accused **Gabriel [L.] Duero** is hereby **CONVICTED** of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code in the amount of P46,602.54, his guilt therefor having been proven beyond reasonable doubt. Considering his full restitution of the amount malversed which this Court takes as a mitigating circumstance in his favor, and applying provisions of the Indeterminate Sentence Law, the Court hereby imposes upon him the indeterminate penalty of imprisonment ranging from eighteen (18) years of *reclusion temporal* by way of maximum and ten (10) years and one (1) day of *prision mayor* by way of minimum.

A fine of P46,602.54, an amount equal to the amount malversed, is imposed, together with special perpetual disqualification from public office.

SO ORDERED.^[25]

Petitioner moved for reconsideration which the *Sandiganbayan* denied on February 17, 2004. Nevertheless, it considered a second mitigating circumstance of voluntary

surrender and modified its decision, to wit:

WHEREFORE, the MOTION FOR RECONSIDERATION dated June 20, 2003 filed by the accused **Gabriel [L.] Duero** of the Decision in Criminal Case No. 11999 promulgated on June 6, 2003 is hereby **DENIED for lack of merit. The decision is MODIFIED to include the voluntary surrender of the accused as an additional mitigating circumstance** to full restitution of the amount malversed. Considering two (2) mitigating circumstances and applying the Indeterminate Sentence Law, the accused is sentenced to an indeterminate penalty of imprisonment ranging from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to ten (10) years and one (1) day of *prision mayor* as maximum. A fine of P46,602.54, an amount equal to the amount malversed, is likewise imposed, together with special perpetual disqualification from public office.

SO ORDERED.^[26]

Hence, the instant appeal. Petitioner submits that the *Sandiganbayan* erred in finding that:

I

. . . THE EXAMINATION AND AUDIT REPORT PREPARED AND CONDUCTED BY THE EXAMINING AUDITORS WAS REGULARLY CONDUCTED AND THE ALLEGED FUND SHORTAGE OF PETITIONER WAS ACCURATELY ESTABLISHED AS BASIS FOR THE PRESUMPTION RELIED UPON FOR HIS CONVICTION OF MALVERSATION.

II

. . . ACTUAL RECEIPT BY PETITIONER OF THE DEMAND REQUIRED FOR THE PRESUMPTION TO ARISE HAD BEEN ESTABLISHED BY COMPETENT EVIDENCE.

III

. . . THE CONSTITUTIONAL RIGHT OF PETITIONER TO DUE PROCESS WAS VIOLATED BY NOT ALLOWING RE-EXAMINATION AND RE-AUDIT OF THE ALLEGED SHORTAGE OF THE PETITIONER.

IV

. . . THE TOTALITY OF THE EVIDENCE AGAINST PETITIONER IS SUFFICIENT TO ESTABLISH PETITIONER'S GUILT OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.^[27]

Otherwise stated, the basic issue is: Did the *Sandiganbayan* err in finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds?

Generally, the factual findings of the *Sandiganbayan* are conclusive on this Court. However, there are established exceptions, such as when (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference