

SECOND DIVISION

[G.R. NO. 145229, April 24, 2006]

**ROMEO L. DAVALOS, SR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

GARCIA, J.:

Before us is this petition for review on certiorari seeking the reversal of the Decision^[1] of the Sandiganbayan^[2] promulgated on October 6, 2000 in Criminal Case No. 18003, convicting petitioner Romeo L. Davalos, Sr., of the crime of malversation of public funds and sentencing him to suffer an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, to suffer perpetual special disqualification, and to pay a fine of P18,000.00 plus costs.

On September 7, 1992, Special Prosecution Officer Reynaldo L. Mendoza filed with the Sandiganbayan an Information^[3] charging petitioner with malversation of public funds, allegedly committed, as follows:

That on or about January 14, 1988, or immediately prior and subsequent thereto, in Boac, Marinduque, and within the jurisdiction of this Honorable Court, accused being then the Supply Officer of Boac, Marinduque, hence accountable for public funds and property collected and received by reason of his official position, with grave abuse of confidence, did then and there, willfully and unlawfully take, misappropriate and embezzle from said funds the total amount of EIGHTEEN THOUSAND PESOS (P18,000.00), to the damage and prejudice of the Government.

Contrary to law.

Arraigned on January 25, 1993, petitioner, assisted by counsel, entered a plea of "Not Guilty"^[4] and waived the pre-trial. Thereafter, trial ensued.

Culled from the records are the following pertinent facts:

On January 14, 1988, petitioner Davalos, as supply officer of the Office of the Provincial Engineer of Marinduque, received from the provincial cashier a cash advance of P18,000.00 covered by Philippine National Bank (PNB) Check No. SN-189833-N^[5] for the procurement of working tools for a certain "NALGO" project. Petitioner's receipt of the amount is evidenced by his signature appearing in Disbursement Voucher No. 103-880-08.^[6]

On May 5, 1988, petitioner received a demand letter^[7] from then Provincial

Treasurer Timoteo Magalang giving him until May 16, 1988 to submit a liquidation of the aforementioned P18,000.00 cash advance. This was followed by another letter^[8] received by petitioner on May 26, 1988, giving him this time up to May 31, 1999 to settle his account. But as in the first instance, the second demand went unheeded.

In a letter dated August 16, 1990, the new Provincial Treasurer, Norma Cabungal, informed the Provincial Prosecutor of Marinduque of the Commission on Audit's findings on the examination of the cash accounts of the province wherein petitioner was found to have an unsettled cash advance in the amount of P18,000.00.

During the trial, petitioner testified being, at the time material to the case, the supply officer of the Office of the Provincial Engineer of Marinduque. His functions, according to him, include taking care of office properties and purchasing the necessary materials and supplies as needed by their office. As such, he was also referred to as the procurement officer.

Petitioner admitted receiving the P18,000.00 cash advance intended to purchase working tools for the "NALGO" project. He, however, denied allegations that he misappropriated the said amount.

He testified, too, that, *albeit* the purchase order (PO) for the said tools were already approved by the provincial treasurer and the provincial auditor, the new administration decided to scrap the proposed transaction. According to petitioner, following the assumption to office of Governor Luisito Reyes, his office files containing the said PO and the requisition paper were taken and his services terminated per Governor Reyes' Memorandum No. 88-63^[9] dated November 23, 1988. Said memorandum also stated that "should you apply for the commutation/payment of your unused leave/vacation and sick/credits, the same may be approved provided it is first applied/charged to your unliquidated cash advance of P18,000.00." Pressing the point, petitioner stated that he then applied for his terminal leave and other benefits through the following summary of vouchers which he personally prepared, but were then disapproved:

1) Disbursement Voucher (DV) dated May 13, 1991, for the commutation payment of the 145 vacation leaves of absence with pay from May 1, 1988 to November 2, 1988 in the amount of P7, 022.87;^[10]

2) DV dated May 13, 1991, for the payment of accrued terminal leave from November 23, 1988 to January 10, 1990 in the amount of P14, 055.82;^[11]

3) DV dated May 13, 1991, for the payment of Cash Gift and Year End Benefit in the amount of P2,043.00;^[12] and

4) DV dated May 13, 1991, for the payment of Cost of Living Allowance from June 1, 1988 to November 22, 1988 in the amount of P1,146.67.
^[13]

Petitioner then went on to declare that Gov. Reyes was out to harass him, hence the disapproval of the above-mentioned vouchers. Despite his belief that he was then no longer obligated to liquidate his P18,000.00 cash advance, petitioner nonetheless

settled his account, as evidenced by OR No. 1987018^[14] dated January 27, 1995. To prove his point, petitioner presented an undated letter of the provincial accountant addressed to the Office of the Sangguniang Panlalawigan stating, among other things, that he had already settled his cash advance of P18,000.00^[15]

When confronted with Governor Reyes' Memorandum regarding his summary dismissal from the service for abandoning his post for four (4) months since July 15, 1988, and for other acts of misconduct and other offenses, petitioner merely denied all those charges. As to the charge of abandonment, petitioner argued that he was entitled to vacation leave and that he had filed an application for commutation of his leave from May 1, 1988 up to November 22, 1988. He also brushed aside the charge of malversation and declared that he had already been relieved of his accountabilities by the Commission on Audit. He, however, admitted receiving from the provincial treasurer the two demand letters earlier adverted to dated May 5, 1988 and May 26, 1988 requiring him to submit his liquidation of the P18,000.00 cash advance on the dates respectively indicated therein.

On re-direct examination, petitioner denied abandoning his office, having, according to him, filed his application for leave of absence covering the period from May 1, 1988 up to November 22, 1988.

On re-cross examination, petitioner testified being sick during the entire period covered by his leave application. As regards the purchase of the working tools for which he received the P18,000.00 cash advance, petitioner declared that he actually made a down payment of P11,000.00. He did not, he added, return the balance of P7,000.00 at the time he received his termination paper because he relied on Governor Reyes' Memorandum purportedly allowing him to offset the P18,000.00 from the terminal benefits due him. He later stated in his testimony, however, that the reason he did not give back the balance of P7,000.00 was because he wanted to return the whole amount of P18,000.00.

Petitioner likewise testified that the receipt evidencing the down payment of P11,000.00 for the tools bought was lost; that he went back to the seller in Manila to secure a copy of the lost receipt and brought the tools with him in order to return the same, but the irked seller wanted him to maintain the transaction. As a result, he was able to recover only half of the down payment or P5,500.00. The other P5,500.00 was retained by the seller to answer for the damages suffered by the latter. Consequently, he has in his possession P12,500.00 (the remaining original balance of P7,000.00 plus the recovered amount of P5,500.00).

On June 30, 2000, the Sandiganbayan rendered its decision, finding petitioner guilty beyond reasonable doubt of the crime of malversation of public funds and sentencing him accordingly. Dispositively, the decision reads:

WHEREFORE, judgment is hereby rendered finding accused ROMEO L. DAVALOS, SR. **GUILTY** of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code and, taking into account the existence of a mitigating circumstance, sentencing the said accused to: (a) suffer an indeterminate sentence of imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum; (b) suffer all the appropriate accessory