

## **THIRD DIVISION**

**[ G.R. NO. 164575, December 06, 2006 ]**

**ROBERT P. WA-ACON, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### **D E C I S I O N**

**VELASCO, JR., J.:**

#### **The Case**

This Petition for Review on Certiorari, under Rule 45 of the Rules of Court, seeks the reversal of the April 22, 2004 Decision<sup>[1]</sup> of the Sandiganbayan convicting petitioner Robert P. Wa-acon of Malversation under Article 217 of the Revised Penal Code for misappropriating PhP 92,199.20, which forms part of his accountabilities as Special Collecting Officer of the National Food Authority (NFA); and the July 23, 2004 Resolution<sup>[2]</sup> of said graft court denying Wa-acon's plea for reconsideration in Criminal Case No. 14375.

#### **The Facts**

The information against the accused Wa-acon reads as follows:

That on about the period from July 19, 1979 to September 28, 1981, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, accused Robert P. Wa-acon, a public officer, being a Special Collecting Officer, National Food Authority (NFA) and stationed at Canonigo, Paco, Manila and as such was accountable and responsible of rice stocks and empty sacks for which he received and entrusted to him, by reason of his official position, did then and there willfully, unlawfully and feloniously, with grave abuse of confidence, misappropriate, misapply, embezzle and convert to his own personal use and benefit the aforesaid stocks of rice and empty sacks with a total aggregate money value of P114,303.00, to the damage and prejudice of the government in the aforementioned amount.

CONTRARY TO LAW.<sup>[3]</sup>

The facts of the case as found by the Sandiganbayan are:

On the period from July 19, 1979 to September 28, 1981, accused Robert P. Wa-acon was a Special Collecting Officer of the National Food Authority (NFA) and was assigned at the Kadiwa Center at Moriones, Tondo, Manila. One of his duties was to receive grains, consisting of rice and mongo, which shall then be sold to the public on retail. The proceeds of the sale of the grains shall then be collected by the same accused.

On September 28, 1981, by virtue of a Travel Order, a team of Auditors from the Commission of Audit, composed of Dionisio A. Nillo, as team leader, Mercedes Punzalan, Audit Examiner II, Herminia Gonzales, Audit Examiner II and Raquel Cruz, Clerk II, as members, conducted an examination of the accountabilities of various Special Collecting Officers of the NFA, one of whom was accused Robert P. Wa-acon. The said examination was conducted at the Office of the Regional Auditor, NFA Metro Manila Office at Paco, Manila. In that office, the audit team asked the presence of accused Robert P. Wa-acon by virtue of a demand letter dated September 1981, demanding the latter to produce cash, cash items, stocks and empty sacks and other pertinent papers. As testified by Prosecution witness Dionisio A. Nillo, accused Robert P. Wa-acon told the audit team that "he has no cash on hand at the time pertaining to his accountability as Special Collecting Officer. Hence, it was indicated in the Cash Count Sheet that there was no cash counted during the cash examination.

Based on the examination conducted on the various Warehouse Stock Issues, Empty Sacks Receipts, Official Receipts submitted and the Certificate of Inventory of Stocks and Empty Sacks dated September 18, 1981, containing the signature of accused Robert P. Wa-acon and witnessed by Virgilio Cacanendin, Special Investigator, Manolito Diaz, Bookkeeper, Louie Pastofide, Proceso A. Saavedra, Audit Examiner II and Gloria T. Reyes, Audit Examiner I, the audit team rendered a Report of Examination, Form 74-A of the Cash and Accounts of accused Robert P. Wa-acon. All of the aforementioned documents were submitted by Proceso Saavedra, a resident Audit Examiner of the NFA Metro Manila Office, Paco, Manila, to the Audit team headed by Dionisio A. Nillo. In connection with the Audit conducted, the Audit Team prepared the following Schedules: Schedule 1: Statement of Rice received by Robert A. Wa-acon, Schedule 1-A: Statement of Rice/mongo Received by Robert P. Wa-acon, Schedules 2: Statement of Remittances of Proceeds from Sales of Robert P. Wa-acon, Schedule 3: Statement of Refunds made by Robert P. Wa-acon, Schedule I: Statement of Empty Sacks Returned by Robert P. Wa-acon, and Summary of Empty Sacks Accountability of Robert P. Wa-acon and the Revised Summary of Cash Examination of Robert P. Wa-acon.

The Report of the Examination of the Cash and Accountabilities of accused Robert P. Wa-acon shows that the latter incurred a cash shortage of One Hundred Fourteen Thousand Three Hundred Three Pesos (P114,303.00). In the Revised Summary of the Cash Examination of accused Robert P. Wa-acon, the cash shortage was changed to One Hundred Two Thousand and One Hundred Ninety Nine Pesos and Twenty Centavos (P102,199.20) after deducting the cost of sixty (60) bags of regular milled rice value of Six Thousand Nine Hundred (P6,900.00) and the monetary value of the empty sacks returned by accused Robert P. Wa-acon, which is Five Thousand Two Hundred Three Pesos and Eighty Centavos (P5,203.80). However, accused Robert P. Wa-acon made a refund of the amount of Ten Thousand Pesos (P10,000.00). Therefore, the total shortage amount[ed] to *Ninety Two Thousand One Hundred Ninety Nine Pesos and Twenty Centavos (P92,199.20).*<sup>[4]</sup>

During the trial before the Sandiganbayan, petitioner denied that he misapplied and converted for his personal use the stocks of rice and empty sacks as he had been faithfully remitting all the proceeds of the rice he sold to consumers.<sup>[5]</sup>

Petitioner also contended that the shortage discovered by the Audit Team may be attributed to the discrepancy in the actual weight of the rice actually delivered to him and that of the weight reflected in the receipts. In other words, he claimed that the rice delivered to him weighed less than that for which he signed. He alleged that he discovered the shortage of five (5) to ten (10) kilos per sack only upon delivery of the rice to the station/outlet. Petitioner explained that he could not check the weight of the sacks delivered to him as the weighing scale in their office had a maximum capacity of only twelve (12) kilograms. Petitioner claimed that he informed his superiors of such shortage verbally, but was unheeded.<sup>[6]</sup>

Petitioner further claimed that the only reason he signed for the sacks of rice, despite the shortage, was because he was told that he would not be paid his salary if he would not sign, added to the fact that he was then hungry—all of which prompted Wa-acon to sign the audit report of the Audit Team.<sup>[7]</sup> As to the missing empty sacks, petitioner argued that those were in the custody of the delivery man who had a logbook where Special Collecting Officers sign as proof that the delivery man had taken the sacks.<sup>[8]</sup>

### **The Sandiganbayan Ruling**

Citing the presumption under the last paragraph of Article 217 of the Revised Penal Code that "the failure of the public officer to have duly forthcoming any public funds which he is chargeable upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use" and the inability of accused Wa-acon to "rebut the presumption that he had put the rice stocks and the empty sacks to personal use," the Sandiganbayan found him guilty of malversation of public funds under the Revised Penal Code. In the graft court's April 22, 2004 Decision, the dispositive portion reads:

**WHEREFORE**, judgment is hereby rendered finding the accused Robert P. Wa-acon, **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds as defined in and penalized by Article 217 of the Revised Penal Code and, there being no modifying circumstance, is hereby sentenced to suffer an indeterminate penalty of from TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal* minimum, as the minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *reclusion temporal* maximum, as the maximum and to suffer perpetual special disqualification. The accused Robert P. Wa-acon is likewise ordered to pay a FINE equal to the amount of the funds malversed, which is Ninety Two Thousand One Hundred Ninety Nine Pesos and Twenty Centavos (P 92,199.20) and to indemnify the National Food Authority (NFA) the amount of Ninety Two Thousand One Hundred Ninety Nine Pesos and Twenty Centavos (P92,199.20) with interest thereon.

SO ORDERED.<sup>[9]</sup>

Correspondingly, petitioner filed his May 20, 2004 Motion for Reconsideration<sup>[10]</sup> of the Decision, reiterating his defenses raised during the trial.

On July 23, 2004, the Sandiganbayan issued the assailed Resolution denying petitioner's Motion for Reconsideration on the ground that accused Wa-acon raised no new substantial issues and cogent reasons to justify the reversal of the April 22, 2004 Decision.

Thus, Wa-acon filed the instant petition.

### **The Court's Ruling**

Petitioner Wa-acon presented a lone issue to be resolved: his guilt was not proven beyond reasonable doubt; thus, the assailed Decision and Resolution convicting him of malversation must be reversed.

In seeking the recall of his conviction, accused petitioner asserts that the unremitted amounts for the rice stocks and the money allegedly gained from the empty sacks were not used for his personal use and therefore, the fourth element of malversation—that the accused appropriated, took, or misappropriated public funds or property for which he was accountable—was not proven. According to petitioner, while he might have violated certain auditing rules and regulations, this violation is not tantamount to malversation. He leans on the rulings in *Madarang v. Sandiganbayan*,<sup>[11]</sup> and *Agullo v. Sandiganbayan*,<sup>[12]</sup> that "it is essential to prove that there had been a conversion of public fund to personal use" and that "conversion must be affirmatively proved"; otherwise, the presumption is "deemed never to have existed at all."

Article 217 of the Revised Penal Code whereas provides:

*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, or 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 x x x

x x x x

**The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer shall be prima facie evidence that he has put such missing funds or property to personal uses** (emphasis supplied).

The elements to constitute malversation under Article 217 of the Revised Penal Code are as follows:

The elements common to all acts of malversation – under Article 217 are:  
(a) that the offender be a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c)