

FIRST DIVISION

[G.R. NOS. 148682-85, November 30, 2005]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANGEL A. ENFERMO, APPELLANT.

DECISION

AZCUNA, J.:

This case was certified to this Court, pursuant to Section 13, paragraph 2 of Rule 124 of the Revised Rules of Criminal Procedure, by the Court of Appeals after reviewing the case on appeal^[1] and affirming with modification the decision of the Regional Trial Court of Pasig City, Branch 158, which found appellant guilty of two counts of Malversation through Falsification of Public Documents and two counts of Malversation.^[2]

On October 25, 1996, the Office of the Ombudsman filed with the Regional Trial Court of Pasig City, Metro Manila twelve informations against appellant, Angel A. Enfermo, and Ferdinand C. Entienza, both former employees of the National Research Council of the Philippines (NRCP).^[3] Several of the cases filed were dismissed for repeated failure of the prosecution to present evidence.^[4] The motion for reconsideration of the order of dismissal was denied.^[5] The NRCP through the Government Corporate Counsel filed a petition for *certiorari*^[6] with the Court of Appeals questioning the dismissal and the denial of the motion for reconsideration, which petition was denied by the Court of Appeals in a resolution dated November 18, 1998.^[7] As a result of the dismissal of those cases, the only ones that survived and were tried in the Regional Trial Court were Criminal Cases Nos. 111086 and 111087 for Malversation through Falsification of Public Documents and Criminal Cases Nos. 111089 and 111091 for Estafa through Falsification of Public Documents, in which only appellant, Angel A. Enfermo, was charged.

The prosecution, in support of its charges, presented evidence, as follows:

Alejandro Rodanilla, Administrative Officer of the NRCP, testified that appellant, Angel A. Enfermo, held the position of Disbursing Officer II, Accounting Section, Finance and Administrative Division of the NRCP. His duties and responsibilities as a disbursing officer are the following: "He assist[s] the cashier in the preparation and the release of the checks covering the financial transaction of the NRCP. He also assist[s] the cashier in encashing the checks for salaries of the employees of NRCP."^[8]

As testified to by Luz Acosta Aramil, Accountant III of NRCP, sometime in 1993, it was discovered that the debit and credit records of the checks issued and paid by its depository bank, Land Bank of the Philippines (LBP), did not balance. The bank reconciliation showed overstatements of P80,000, P60,000 and P60,000 for the

months of June, July and November, respectively. An investigation disclosed that there were double issuances of checks, which were covered by only one disbursement voucher each.

In Criminal Case No. 111086, the charge originated from the double issuance of checks intended for Aurora Dacanay, a researcher who was doing a study on pine shoot moth and tip moth in the Benguet pine forest in the Cordillera. On February 26, 1993, the NRCP issued an LBP check with Check No. 0000163230-BB to Dacanay in the amount of P38,446.13.^[9] This check was duly supported by Disbursement Voucher No. 93-02-95. The sum was the final release of an outright grant in connection with an NRCP-assisted research project E-181, entitled "Population Dynamics of Pine Shoot Moth and Tip Moth in Benguet Pine Forest in the Cordillera."^[10] The check was received and encashed by Dacanay in Baguio City.^[11] However, on May 19, 1993, a second check with Check No. 0000026186-CC was issued to Aurora Dacanay for the same amount of P38,446.13 and supported by the same voucher as the first check. This second check was encashed by appellant in the Parañaque branch of the Land Bank of the Philippines by supposedly forging the signature of the payee and signing his own name as an acknowledgement of receipt of payment.^[12] Appellant received and misappropriated the proceeds of the check.

In Criminal Case No. 111087, again, the charge stemmed from a double issuance of a check intended for Jose M. Bernaldez, a Mathematics professor based in Mindanao State University (MSU), Iligan City. Check No. 0000096515-CC in the amount of P30,000 was issued by the NRCP to Bernaldez, on August 13, 1993.^[13] The check was supported by Disbursement Voucher No. 93-5-591. The amount paid was for an outright grant in connection with the NRCP-assisted research project No. B-78, entitled "On Regular Cyclically K-Complementary Graphs."^[14] The check was received and encashed by Bernaldez in Iligan City.^[15] Again, as in the case of Aurora Dacanay, another check was issued in the name of Jose M. Bernaldez with Check No. 0000026624-CC, which was not supported by a disbursement voucher.^[16] Like the case of Dacanay, appellant encashed the check at the Parañaque branch of the Land Bank of the Philippines, by supposedly forging the signature of Bernaldez, and signing his own name to acknowledge receipt of payment.^[17] Appellant received and misappropriated the proceeds of the check.

The resident auditor of the Commission on Audit assigned to the NRCP, Ma. Eugenia Rodil, testified to an audit report which she prepared and submitted pursuant to the detection of the anomalous transactions at the NRCP. After her cash examination revealed that there was a shortage, a fraud audit in the NRCP was performed. Rodil testified on the documentary evidence gathered relating to the double issuance of checks to Dacanay and Bernaldez. In her investigation she discovered that the bank statement did not tally with the Journal of Checks Issued, which was prepared by Accountant III Aramil and the Report of Checks Issued (RCI), which was prepared by the cashier.^[18]

With regard to Criminal Cases Nos. 111089 and 111091, the prosecution presented Mary Christine Avanzado and Lanie P. Manalo, employees of the NRCP, who both executed affidavits.^[19] Avanzado testified that when she was claiming her salary as Clerk I for the period of January 1–15, 1994, she was informed by appellant that he

had spent the money and would just pay her back.^[20] In the case of Manalo, she did not receive her productivity incentive pay in the amount of P2,000. She then confronted appellant regarding the amount, and the latter replied that he had used it to pay a debt.^[21] Both Avanzado and Manalo signed the payroll upon the promise of appellant that he would return the money.^[22]

Appellant was convicted by the Regional Trial Court on all four charges. On appeal, the Court of Appeals affirmed the RTC decision with modification, as follows:

Appellant contended that the prosecution failed to prove that he falsified the signature of the payee in LBP [Checks] Nos. 0000026186 (Dacanay) and 0000026624 (Bernaldez) in Criminal Case[s] Nos. 111086 and 111087 as it did not present the testimony of the NBI officer or handwriting expert who prepared the handwriting examination report. Moreover, argued the appellant, if he really committed such forgery, then he should have at least imitated the signature of the payee; and since it was his signature which appeared on the dorsal portion of the questioned checks, he could not have forged his own signature. Appellant also pointed out that the prosecution presented mere photocopies of the questioned checks, the originals thereof were not submitted in evidence. The trial court thus erred in convicting the accused in the absence of evidence that he misappropriated the proceeds of the subject checks.

Such contentions are untenable.

The crime charged in Criminal Case[s] Nos. 111086 and 111087 is malversation committed by means of falsification of public documents, the checks considered as public documents evidencing payment of obligation by the government out of public funds

The crime of malversation of public funds is defined and penalized as follows:

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, 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....

. . .

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.

The elements of malversation, essential for the conviction of an accused, under the above penal provision are that:

- (a) the offender is a public officer;
- (b) he has the custody or control of funds or property by reason of the duties of his office;
- (c) the funds or property involved are public funds or property for which he is accountable; and
- (d) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of, such funds or property. (*Rueda, Jr. v. Sandiganbayan*, G.R. No. 129064, November 29, 2000.)

Anent the last element, our Supreme Court has ruled that to justify conviction for malversation of public funds, the prosecution has only to prove that the accused received public funds or property and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for the disappearance of the same. (*Estrada v. Sandiganbayan*, G.R. No. 125160, June 20, 2000, citing *People v. Pepito*, 267 SCRA 358,368, See also *Felicilda v. Grospe*, 211 SCRA 285.) An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily. (*Navallo v. Sandiganbayan*, 234 SCRA 175, 185; *Villanueva v. Sandiganbayan*, 200 SCRA 722, 734.) Such conversion of public funds must be affirmatively proved, whether by direct evidence or by the production of facts from which conversion necessarily follows. (*Bugayong v. People*, 202 SCRA 762.)

In the case at bar, We find that the prosecution has satisfactorily proved all the elements of the crime of malversation under Art. 217 of the Revised Penal Code.

Appellant did not give any explanation as to the shortage in the funds which have been traced to the double issuance of checks, the responsibility for which fell on the cashier (Entienza) and the disbursing officer (appellant). His defense consisted of a mere denial that the signature appearing on the dorsal portion of the questioned checks was not his. In his testimony, however, appellant did not categorically deny that said signature was his but that he could not remember whether it was his signature because it was a long time ago. As to the authenticity of his signature appearing on said checks, upon the request of the NRCP, the NBI conducted a handwriting examination of appellant's signature appearing on the questioned checks together with specimen signatures of appellant taken from daily time records, and submitted a report thereon confirming that indeed, the same were written by (1) one and the same person. While it is true that the prosecution did not present the testimony of the NBI officer or handwriting expert who conducted said examination, the signature of appellant appearing on the questioned checks was sufficiently established by the testimony of Luz Aramil who has sufficient familiarity with appellant's signature, having worked with

appellant who was under her supervision and had seen documents signed by him. Such opinion of a non-expert on handwriting is authorized under Sec. 22, Rule 132 of the Rules of Court to prove genuineness of a handwriting. A person is deemed to be acquainted with the handwriting of another where it is shown that, in the ordinary course of business, documents purporting to be written by that person have frequently come into his possession or under his scrutiny or have been habitually submitted to him. (Oscar M. Herrera, Remedial Law, Vol. VI, 1999 ed., p. 279, citing 3 Jones, p. 311.) In *Court Administrator v. Villanueva* (223 SCRA 41), our Supreme Court has ruled that resort to handwriting experts, while probably useful, is not mandatory nor indispensable in examining or comparing handwriting. This is so since under Sec. 22, Rule 132, the handwriting of a person may be proved by any witness who believes it to be the handwriting of such person, because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. In view of the foregoing, it is clear that the testimony of the NBI handwriting expert who conducted the examination and submitted the report questioned by the appellant, is not indispensable in proving the authenticity of appellant's signature on the questioned checks.

Appellant also claimed that the prosecution failed to indubitably establish that it was he who actually falsified the signature of Aurora Dacanay and Jose M. Bernaldez and referred to the testimony of Aramil on cross-examination where the latter could not definitely point to him as the one who signed the name of said payees on the checks. Aramil's testimony, however, only emphasized the point that such act of falsification committed by appellant can be conclusively presumed from the undisputed fact that he was the one who encashed the checks and received the proceeds thereof as evidenced by his signature acknowledging receipt of payment of said checks. **It has been held that in the absence of a satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification. (*Maliwat v. CA*, 256 SCRA 718.) Since it is obvious that the purported signatures of the payees in the questioned checks were not genuine signatures on the basis of visual comparison alone, it goes without saying that the person who encashed the same and received payment thereof is presumed to be the forger of said signatures. Taken together with the circumstances that as disbursing officer, appellant was the one in charge of preparation, encashment and delivery of checks issued by the NRCP, the conclusion is inevitable that no other person other than appellant could have falsified the payees' signature, encashed the questioned checks and misappropriated the proceeds thereof. Being a public officer who had taken advantage of his official position and falsified the signature of the payees of the questioned checks, appellant has committed falsification of public document defined and penalized under Art. 171, paragraph 1 of the Revised Penal Code.**

The totality of evidence indeed points to the appellant as the one