

SECOND DIVISION

[G.R. No. 153483, February 14, 2003]

FLORDELIZA F. QUERIJERO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review of the decision,^[1] dated February 5, 2001, of the Sandiganbayan, finding petitioner Flordeliza F. Querijero guilty of malversation of public funds and sentencing her to suffer a penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum; to indemnify the Republic of the Philippines in the amount of P165,722.78; to pay a fine in the same amount and the costs of the suit; and to suffer perpetual special disqualification to hold public office. Petitioner likewise seeks the reversal of the resolution,^[2] dated April 25, 2002, of the Sandiganbayan, denying her motion for reconsideration.

The information against petitioner Flordeliza F. Querijero alleged —

That on or about July 29, 1986, or for some time prior thereto, in Lucena City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an accountable public officer being a Cashier of Integrated Provincial Health Office, Lucena City and as such accountable for public funds collected and received by her by reason of her office, did then and there wilfully, unlawfully, and feloniously malverse, convert, and misappropriate for her personal use and benefit the amount of One Hundred Sixty Five Thousand Seven Hundred Twenty Two Pesos and 78/100 (P165,722.78), Philippine Currency, to the damage and prejudice of the government, particularly Lucena City, in the aforementioned amount.

CONTRARY TO LAW.^[3]

Upon arraignment, petitioner pleaded not guilty to the charge, whereupon she was tried.

The prosecution's lone witness was Patricio C. Haway, Assistant Provincial Auditor of Quezon Province. Haway testified that he was head of a team of COA auditors, which included Auditors Susana P. Salibio and Dalmacio Aspi. The team conducted an examination of the cash and accounts of petitioner from April 7, 1986 to July 9, 1986. On July 29, 1986, the team went to the office of petitioner, who was then the Cashier of the Integrated Provincial Health Office in Lucena City, but the latter was absent that day. The auditors were later informed that petitioner had not reported for work since July 9, 1986. For this reason, they sealed the safe of petitioner, in the

presence of administrative officer Teodoro Melichala and a certain Ofelia Villapando. They also asked petitioner to attend the opening of her safe on August 5, 1986. Two more letters,^[4] dated August 11, 1986, addressed to petitioner, were sent to her at her Lucena and Parañaque residences, informing her that the opening of her safe had been reset to August 21, 1986 and asking her to give the audit team the combination of the safe. As petitioner failed to comply with the request, the auditors decided to open petitioner's safe without her, doing so in the presence of witnesses, among whom were Ofelia Villapando and Luisito Q. Rivamonte. They prepared an inventory^[5] of the contents of the safe and a Schedule of Cash.^[6] Auditor Dalmacio G. Aspi prepared the Statement of Cash Advances and Disbursements^[7] and the Statement of Deposits and Disbursements by Checks^[8] for the period April 7, 1986 to July 9, 1986, while Auditor Susana P. Salibio prepared the List of Unrecorded Collections.^[9] Based on the audit conducted, Patricio C. Haway prepared a Report of Cash Examination,^[10] showing a shortage of P165,722.78. The shortage consisted of undeposited/unremitted cash collections amounting to P102,106.89, unaccounted/unrecorded GSIS/SSS checks in the amount of P30,748.85, and unliquidated cash advances amounting to P32,867.04. Haway claimed that they required petitioner to reconstitute the amount of shortage and to submit a written explanation for the shortage, but she never did.^[11]

The defense presented five witnesses, including petitioner Flordeliza F. Querijero. Petitioner claimed she had been on sick leave for sometime before the audit team first went to her office on July 29, 1986. She complained that she had not been given an opportunity to go over the Report of Cash Examination of the audit team and that the amounts of P100,000.00 and P43,899.33 in the List of Unrecorded Collections^[12] were checks representing provincial aid which had already been deposited and recorded, as shown in the Statement of Deposits and Disbursement by Checks No. 8-70-300 Accounts^[13] of Auditor Dalmacio G. Aspi. As for the remaining amount, representing GSIS and SSS checks, petitioner pointed to Acting Collection Officer Ofelia Villapando as the person in charge of such accounts. She denied having unliquidated cash advance totaling P32,867.04. She claimed that the said amount included personal services amounting to P21,862.44, which was intended for the travel allowances of rural health workers, and it was in the process of payroll and check when she took her sick leave. She likewise denied having incurred unliquidated market and miscellaneous expenses in the amount of P7,004.60 because, she said, it had already been paid but was not reimbursed.^[14]

Teresita L. Palentinos, who was Record and Filing Clerk assigned at the Cashier's Office, testified that her work consisted in recording and preparing vouchers, checks and payrolls, releasing checks, and helping the cashier in the release of pay envelopes. According to her, there were two (2) vaults in their office, the big one, which was used by petitioner, and the small one, which was used by Ofelia Villapando. She was present during the opening of the safe of petitioner on August 21, 1986. She testified that the safe of Ofelia Villapando was never opened by the audit team. She further testified that Ofelia Villapando handled the cash and accounts and that the latter was also in charge of making deposits.^[15]

Rosalinda Lusterio, collecting officer of the Quezon Integrated Provincial Health Office, testified that there were several collectors in their office. She was in charge of summarizing the official receipt duplicates, while Ofelia Villapando collected the

GSIS and SSS payments in representation of their office. According to her, petitioner had nothing to do with the GSIS and SSS checks, and that the latter was no longer working in the office on July 8, 1986. She likewise testified that Ofelia Villapando, who was in charge of the collection of Provincial Aid, deposited the same in the bank. Petitioner, as cashier, was the one who gave the salaries to the employees and entered the transactions in the cash book. Petitioner also conducted the cash count and afterwards placed the money in the vault, where the same remained until they were used for payments based on the vouchers. Petitioner also prepared the remittance advice when the collections were deposited in the bank, and these were recorded in the cash book.^[16]

Evelyn A. Cabana testified that she was detailed to the Cashier's Office from 1985 to 1990 as Clerk I. Her duties were to process Medicare claims and to record the same. She said that sometimes Ofelia Villapando assigned her to issue receipts for the Medicare income. However, she said it was Ofelia Villapando who regularly issued the receipts for the collection of Medicare claims and deposited the corresponding payments to the bank.^[17]

Luisito Q. Rivamonte, who was Administrative Officer III at the time of his testimony, stated that petitioner last reported for work on July 8, 1986. On July 10, 1986, he was designated as Acting Cashier.^[18]

Based on the foregoing evidence of the parties, the Sandiganbayan rendered its decision on February 5, 2001, the dispositive portion of which reads:

WHEREFORE, the quantum of evidence sufficient to prove the guilt of the accused beyond reasonable doubt having been established, the Court FINDS Flordeliza Querijero y Faller "GUILTY" beyond reasonable doubt of the crime of Malversation of Public Funds penalized under Article 217 of the Revised Penal Code. Applying the Indeterminate Sentence Law, there being no mitigating nor aggravating circumstance, she is hereby sentenced to suffer the indeterminate penalty of TEN (10) years, and ONE (1) day of *Prision Mayor* as Minimum to EIGHTEEN (18) years, EIGHT (8) months and ONE (1) day of *Reclusion Temporal* as Maximum.

She is likewise ordered to indemnify the Republic of the Philippines the amount of One Hundred Sixty Five Thousand Seven Hundred Twenty Two Pesos and Seventy Eight Centavos (P165,722.78); to pay a fine in the same amount, which is the amount of money malversed and the costs of the suit, and, finally, to suffer perpetual special disqualification to hold public office.

SO ORDERED.

Quezon City, Philippines, September 14, 2000.^[19]

Petitioner filed a motion for reconsideration, but her motion was denied. Hence this appeal.

Petitioner raises the following issues:

First – WHETHER OR NOT, IN LIGHT OF THE EVIDENCE ON RECORD, THE AUDIT WAS REGULARLY CONDUCTED AND THE ALLEGED FUND SHORTAGE OF PETITIONER WAS ACCURATELY ESTABLISHED AS BASIS FOR THE PRESUMPTION RELIED UPON FOR HER CONVICTION OF MALVERSATION;

Second – WHETHER OR NOT, GIVEN THE EVIDENCE ON THE MATTER, ACTUAL RECEIPT BY PETITIONER OF THE DEMAND REQUIRED FOR THE PRESUMPTION TO ARISE HAD BEEN ESTABLISHED BY COMPETENT EVIDENCE; and

Third – WHETHER OR NOT THE TOTALITY OF THE EVIDENCE AGAINST PETITIONER IS SUFFICIENT TO ESTABLISH PETITIONER’S GUILT OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.^[20]

After due consideration of the evidence in this case, we find the appeal meritorious.

Conviction for malversation of public funds or property under Art. 217^[21] of the Revised Penal Code requires proof 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.^[22]

Petitioner was, at the time of the alleged commission of the crime, the cashier of the Integrated Provincial Health Office in Lucena City. She had been in the government service for 40 years, 27 years of which as cashier. She was found guilty pursuant to Art. 217 of the Revised Penal Code, which provides that “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.”

This presumption is negated when the accused is able to present sufficient evidence that can nullify any likelihood that he had put the funds or property to personal use.^[23] Petitioner alleges that the presumption provided under Art. 217 of the Revised Penal Code cannot arise in this case because the audit conducted was “irregular, incomplete, and inaccurate,” and, consequently, the alleged shortage was not established. Indeed, the records show that aside from petitioner, there were other accountable officers in the Cashier’s Office, among whom were Ofelia Villapando, who collected GSIS and SSS payments, Provincial Aid, and Medicare Claims and deposited the corresponding payments in the bank; Rosalinda Lusterio, who had been collecting officer since 1975; and Luisito Rivamonte, who had been designated Acting Cashier on July 10, 1986. However, only the cash and accounts of petitioner were examined by the COA auditors. Such incomplete audit, which resulted in an alleged shortage that was attributed solely to petitioner’s accountability, is susceptible to errors and inaccuracies. The *prima facie* presumption under Art. 217 of the Revised Penal Code arises only if there is no issue as to the accuracy, correctness, and regularity of the audit findings and if the fact that funds are missing is indubitably established.^[24]