

## THIRD DIVISION

[ G.R. No. 112314, March 28, 2001 ]

**VICENTE R. MADARANG, PETITIONER, VS. SANDIGANBAYAN  
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**MELO, J.:**

This is one of the cases which, regrettably, was not acted upon with dispatch, especially so, in view of the submission by the Office of the Solicitor General of a manifestation recommending acquittal. That petitioner was not detained is not excuse for the delay. In any event, the Court in an effort to dispose of the old cases in its docket promulgated on February 27, 2001 A.M. No. 00-9-03-SC distributing among its members said cases, and the herein petition was re-raffled to undersigned *ponente*.

Petitioner Vicente R. Madarang was charged before the Sandiganbayan with the crime of Malversation in Criminal Case No. 14283, under the following Information:

That sometime in July 1986, or prior thereto, in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a Barangay Captain of Barangay Pahina Central, Cebu City, and as such, is accountable for public funds received by him in such capacity, and having received the total amount of Twenty Thousand Seven Hundred Pesos (P20,700.00) from a lessee as rentals of the real property owned by the City of Cebu, did then and there, willfully, unlawfully, and feloniously, with grave abuse of confidence, misappropriate, embezzle and take away the aforesaid funds which he misappropriated and converted to his own use and benefit, to the damage and prejudice of the government in the aforestated amount.

(p. 68, Rollo.)

Petitioner pleaded not guilty to the charge and stood trial, resulting in a judgment of conviction, accordingly disposing:

WHEREFORE, the Court finds Vicente R. Madarang guilty beyond reasonable doubt of the crime of malversation of public funds defined in Article 217 of the Revised Penal Code and charged in the Information at bar. Appreciating in his favor the mitigating circumstance of restitution and applying the Indeterminate Sentence Law, the Court imposes upon him the penalties of imprisonment ranging from 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; fine in the amount of P20,700.00, and perpetual special disqualification.

The amount malversed having been restituted, no civil liability is imposed upon Madarang.

With cost.

(pp. 80-81, Rollo.)

Each side presented only one witness. Cipriano R. Jimeno, State Auditor I for the Visayas Region, testified for the prosecution while petitioner testified in his defense.

The undisputed facts as summarized by the Sandiganbayan are as follows:

It appears from the pre-trial stipulations and the evidence of the parties that the City of Cebu owned a parcel of land at Panganiban Street, Barangay Pahina Central, Cebu City. With the previous permission of the Sangguniang Panlungsod of the City and for the purpose of raising funds for the operations of the Barangay Tanods and installation of a water system in the barangay hall, Barangay Pahina Central, represented by Barangay Captain Vicente R. Madarang, and Mrs. Dora M. Lim, owner of Louis Pharmacy, executed a Lease Agreement on January 17, 1984, over a portion of the property. Mrs. Lim undertook to pay to the Barangay a monthly rental of P300.00 for a period of 20 years from that date (TSN, September 2, 1992, pp. 11; Pre-Trial Order, Records, p. 137; Exh. "B").

Even before the lease agreement was executed, Madarang, through his Barangay Secretary Boy Colina, received from Mrs. Lim on November 20, 1983, the amount of P1,800.00 as advance rental. Subsequent payments of advance rentals were personally received by Madarang as follows:

On May 15, 1984, for May 1988

To May 1986-----P7,200.00

On September 1, 1985 for May

1986 to Dec. 1987-----5,700.00

On November 27, 1985, for 1988-----3,600.00

(TSN, May 17, 1993, p. 7)

Then on May 29, 1986, Madarang received the advance payment of the increase in rental for 1987 and 1988 in the sum of P2,400.00. All in all as of May 29, 1986, he had collected from Mrs. Dora Lim in accordance with the Lease Agreement the total of P20,700.00 including the P1,800.00 receipted by Boy Colina for him (Exh. "C", "C-1" to "C-4"; TSN, May 17, 1993, pp. 7-11, 37; Pre-Trial Order, Records, pp. 137-138).

In July 1986, Cipriano P. Jimeno, Auditor I, and Maria O. Supo, Auditing Examiner I, Regional Office No. VII, Commission on Audit, Cebu City, conducted an audit of the 10% share of Barangay Pahina Central from

1983 to 1985. In the course, thereof, they found that Madarang had collected advance rentals from Mrs. Lim amounting to P20,700.00. The receipts issued for the collections were not the official receipts required by Section 68 of Presidential Decree No. 1445, but pieces of bond paper. The auditor also discovered that the amounts collected had not been deposited with the Treasurer of Cebu City, for proper recording and accounting in violation of Section 69 of the same decree. They rendered their report dated August 12, 1986, recommending that Madarang be required to issue the corresponding official receipts and deposit the P20,700.00 with the City Treasurer of Cebu City (Exhibits "F", "G", "C", "C-1" to "C-4"; September 2, 1992, pp. 5-12).

Accordingly, Leah A. Ebarle, City Auditor of Cebu City, wrote Madarang a letter dated September 5, 1986, requiring him to issue the necessary official receipts and deposit the amounts with the City Treasurer. This letter he received as evidenced by his answer to do so, notwithstanding the follow-up letter of September 30, 1986, which he received on October 8, 1986 (Exh. "D", "E", "g"; Pre-Trial Order, Records, pp. 138; TSN, September 2, 1992, pp. 14-17; TSN, May 17, 1993, pp. 20-21).

Madarang, however, offered an explanation for his failure to deposit. According to him, P1,200.00 of the P20,700.00 which he collected in cash, was paid to suppliers of materials for the water system of the barangay hall. He presented Resolution No. 19 (Series of 1984) passed by the Barangay Council on April 8, 1984, appropriating P1,200.00 for the materials (Exh. "3", "6"; TSN, May 17, 1993, pp. 10-11, 14-15, 18-19).

The amount of P7,200.00 of the P20,700.00, which he also collected in cash, Madarang continued, was paid to suppliers of barangay police uniforms. He adduced Resolution No. 31 (Series of 1984) approved by the Barangay Council on November 4, 1984, appropriating the amount for the purpose, and a list of recipients of the uniforms (Exh. "2", "4", "6"; TSN, May 17, 1993, pp. 10-11, 15-18).

The balance of P12,300.00 was, Madarang further explained, the costs of medicines which members of his barangay bought from Mrs. Lim on credit, which he guaranteed payment, but which she charged against the rentals due from her. Madarang and Mrs. Lim agreed that she would sell medicines on credit when presented with the doctor's prescriptions bearing his signature. Madarang introduced alleged samples of the prescriptions now marked Exhibits 10, 10-a to 10-q bearing dates from September 1983 to July 1984 (TSN, May 17, 1993, pp. 10-13; Exh. "5", "6"; Pre-Trial Order, Records, pp. 137-138).

On January 6, 1987, Madarang deposited with the City Treasurer the amount of P20,700.00 representing "rental of Louis Pharmacy," as shown by the Official Receipt issued on that date in the name of Milagros Bagano, Barangay Treasurer of Pahina Central. This was after he received the subpoena sent to him on December 9, 1986, by Deputized Tanodbayan Prosecutor Generosa G. Laura and also after more than three months from the demand to deposit the amount with the City Treasurer.