

SECOND DIVISION

[G.R. No. 132926, July 20, 2001]

**ELVIRA AGULLO, PETITIONER, VS. SANDIGANBAYAN AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

BUENA, J.:

Charged with, tried and convicted in Criminal Case No. 13579 for malversation of public funds, herein petitioner Elvira Agullo, erstwhile Disbursing Officer of the then Ministry of Public Works and Highways (MPWH), Regional Office No. VIII, Candahug, Palo, Leyte, now comes before the High Court to assail the Decision^[1] of the Sandiganbayan promulgated on 16 March 1992, and its Resolution dated 11 March 1998, denying petitioner's motion for reconsideration^[2] but reducing the penalty imposed on petitioner as follows:

"**WHEREFORE**, the Court finds the accused Elvira S. Agullo guilty beyond reasonable doubt of the crime of Malversation of Public Funds, defined and penalized under Article 217, paragraph 4 of the Revised Penal Code. [There being neither mitigating nor aggravating circumstances, no evidence having been adduced respecting partial or full restitution of the amount malversed,] **Considering the absence of any aggravating circumstances and her full restitution by salary deduction**, the accused Elvira S. Agullo should be, as she is, hereby sentenced to the indeterminate penalty of, from 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] **SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of RECLUSION TEMPORAL, AS MAXIMUM**, with the accessory penalties of the law; to pay a fine in the sum of P26,404.26 without subsidiary imprisonment in case of insolvency; to suffer the penalty of Perpetual Special Disqualification and to pay the costs." (Emphasis ours)

In an information^[3] dated 30 September 1988, herein petitioner was charged with the crime of malversation of public funds, committed as follows:

"That on or about the period October 22, 1985 to July 14, 1986, inclusive or within said dates in the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, being then the disbursing officer of then Ministry of Public Works and Highways, Regional Office No. VIII, Candahug, Palo, Leyte, charged with the official custody of public funds thus paid, collected and received by her in her official capacity, and by reason of which duties she is accountable thereof, taking advantage of her official position, did then and there wilfully, unlawfully and feloniously take, convert and misappropriate for her own personal use and benefit the

public funds she had in her possession in the amount of Twenty Six Thousand Four Hundred Four Pesos and 26/100 (**P26,404.26**), belonging to the government of the Republic of the Philippines, to the damage and prejudice of the latter in the aforestated amount.

"Contrary to law."

Upon arraignment, herein petitioner Agullo, assisted by *counsel de officio* Antonio Manzano, pleaded not guilty^[4] to the charge, after which the Sandiganbayan conducted a pre-trial on 11 February 1990 and issued the following Pre-Trial Order:
^[5]

"When this case was called for pre-trial, the accused personally and through her counsel Atty. Antonio Manzano of the CLAO readily entered into **stipulations** insofar as her **official position in government** as well as the **fact of audit of her accounts** are concerned, including therewith the admission that, in all respects the Cash Production Notice and the Examination of her Cash and Accounts which the government marked as Exhibit `A' was faithful reproduction of the original, and insofar as the contents thereof are concerned, are correct. The accused likewise admitted that she had received a **letter of demand**, said letter dated July 14, 1986 marked as exhibit `B'. With this the accused stated that her **defense was premised on her having suffered a stroke on October 22, 1985 as a result of which the amount subject of the shortage found in her audit had been lost.**

"The accused also indicated that not only had she immediately replied to the letter by various communications by her or in her behalf protesting the withholding of various amounts due her by way of salaries on the premise that the loss of the amount subject matter of the Information was not chargeable to her as a personal liability. The accused has likewise informed the Court that prior to the incident on October 22, 1985, she had been **audited on May 27, 1985 and, after the incident, on December 23, 1985 although she concedes she was also audited on July 14, 1986.**

"Considering that all the documents necessary for the defense of the accused are still to be organized, Atty. Manzano is given ten (10) days from today within which to prepare a proposal for stipulations of facts and, if that is not possible, at least a complete outline of his case together with the marking of the documents he wishes to present which the prosecution might not admit as to the substance thereof though the genuineness of the documents presented might be conceded.

"With the above, the prosecution may now rest its case and the presentation of the evidence for the defense may take place on April 5 and 6, and May 17 and 18, 1990, at 8:00 o' clock in the morning and 2:00 o' clock in the afternoon.

"The setting for tomorrow is cancelled.

"SO ORDERED." (Emphasis ours)

As borne by the records, the charge of malversation against petitioner germinated from an audit conducted on 14 July 1986 by Ignacio Gerez, Auditing Examiner III, as a result of which a P26,404.26 cash shortage was discovered on petitioner's accountability. On the same date, Gerez informed petitioner of said finding of cash shortage and required the latter, through a letter of demand,^[6] to "produce immediately the missing funds." Further, petitioner was required to submit within 72 hours from receipt a written explanation of the cash shortage.

In a letter^[7] dated 25 August 1986, addressed to the Resident Auditor of the MPWH, petitioner complied with the directive by explaining that the cash shortage was, in effect, due to a "fortuitous event" where the amount could have been stolen/taken by somebody on the day she suffered a stroke on 22 October 1985, near the corner of Juan Luna Street and Imelda Avenue, Tacloban City.

In the course of the pre-trial, petitioner Agullo conceded the fact of audit and admitted^[8] the findings in the Report of Cash Examination and the facts set forth in the Letter of Demand. In effect, she admitted the fact of shortage in the amount stated in the Information. Notwithstanding, petitioner Agullo, at all stages of the criminal indictment, persistently professed her innocence of the charge and categorically denied having malversed or converted the public funds in question for her own personal use or benefit.^[9]

With petitioner's admission of the fact of cash shortage, the prosecution then rested its case.^[10] For its part, the defense, in its bid to overturn the presumption of malversation and shatter the prima facie evidence of conversion, offered the testimony of the following witnesses: petitioner Elvira Agullo; Rene Briones Austero, Cashier III of the Department of Public Works and Highways (DPWH), Region VIII; and Engracia Camposano-Camaoy, Barangay Captain of Hinabuyan, Dagame, Leyte.

During trial, the defense offered to present the testimony of witness Austero for the purpose of proving that an amount equal to **P26,722.05**^[11] was withheld from the salary and other compensation of petitioner Agullo. Further, the defense offered the testimony of witness Barangay Captain Camaoy for the purpose of establishing that "the accused suffered a heart attack (stroke) on October 22, 1985; that on June 30, 1986, the accused informed her that the accused lost the money for which she (was being) subjected to criminal prosecution x x x; and that between October 22, 1985 and June 30, 1986, there had been no demand upon the accused to produce the money for which she was declared short."^[12]

Additionally, the defense presented the following documentary evidence,^[13] all of which were admitted by the Sandiganbayan:

"Exhibit `1' - Letter dated 25 August 1986 by accused to the Resident Auditor MPWH, Regional Office No. 8, Candahug, Palo, Leyte;

"Exhibit `2' - Letter dated 22 August 1987 by accused to Engr. Alfredo P. Torres, Regional Director;

"Exhibit `3' - Medical Certificate dated 05 August 1986, issued by Dr. Juan T. Abando, M.D., St. Paul's Hospital, Tacloban City;

- "Exhibit `3-A'** - Verified Medical Certificate dated 19 January 1986, issued by Dr. Juan Abando, notarized on page 02;
- "Exhibit `4'**- Letter dated 26 December 1986 by accused to the Regional Director;
- "Exhibit `5'** - Letter dated 19 February 1987 to the Regional Director by Atty. Eric T. De Veyra;
- "Exhibit `6'** - Letter dated 15 April 1987 by accused to the Regional Director;
- "Exhibit `7'** - Letter dated 01 September 1987 of Director Alfredo Torres of DPWH to the Regional Director COA;
- "Exhibit `8'** - Letter of Accused dated 26 November 1987;
- "Exhibit `9'** - Affidavit of accused Elvira Agullo;
- "Exhibit `10'**- Affidavit of witness Engracia Camaoy;
- "Exhibit `11'** - Letter-Request dated 04 May 1988 of accused to the Regional Director;
- "Exhibit `12'** - Certification by Mauricio Pacatang;
- "Exhibit `13'** - Protest of accused against the appointment of Sylvia de la Rosa;
- "Exhibit `14'**- Letter dated 25 February 1987 to the Manager, Employees Compensation Department, GSIS, Metro Manila;
- "Exhibit `15'** - Initial Approval of the Employees Compensation Department, GSIS;
- "Exhibit `16'** - Hospitalization Claim for payment of accused;
- "Exhibit `17'** - Report of Injury signed and approved by Pablo P. Burgos, Regional Engineering Coordinator and Head of Office;
- "Exhibit `18'** - Certification issued by PNB Tacloban, thru its Asst. Manager B.L. Telmo;
- "Exhibit `19'** - Memorandum to accused dated 02 April 1984;
- "Exhibit `20'** - Memorandum dated 05 May 1990."

At the witness stand, petitioner Agullo unrelentingly maintained her innocence and vehemently denied the accusation against her. Thus, according to petitioner, in the morning of 21 October 1985, she reported for work and prepared an inventory of her cash accountability^[14] as Disbursing Officer^[15] of the MPWH Regional Office,

Candahug, Palo, Leyte. On the same day, petitioner received around thirteen (13) checks in the form of cash advances in her name totaling **P26,076.87**,^[16] which amount represented salaries of MPWH officials and employees.

Around 1:30 PM, petitioner, together with Benjamin Veridiano, driver of MPWH Finance and Management Division, proceeded to the Philippine National Bank (PNB) Tacloban City Branch, on board the MPWH official vehicle, to encash the aforesaid checks. Upon encashment of the checks, petitioner then put the money inside a PNB envelope which she further placed in her bag. From the PNB, petitioner--who boarded the official vehicle driven by Veridiano for the purpose of proceeding further to the MPWH Regional Office--felt dizziness, chest pain and nausea. As a result of her condition, petitioner Agullo requested driver Veridiano to drop her off at petitioner's residence located at 109 Juan Luna Street--about half a kilometer away from the PNB.^[17]

In the morning of the following day, 22 October 1985, petitioner - upon realizing that it was then the third-week payday of the month, and burdened with the thought that she failed to give the salary of the permanent employees - strove to report for work despite her weak physical condition. Petitioner Agullo testified that she left her residence alone and brought with her the bag containing the money which she encashed the previous day from the PNB.^[18]

Upon leaving the house with the money inside her bag, she walked the stretch of Juan Luna Street and was able to reach almost the corner of Juan Luna and Imelda Avenue^[19] a distance of around 50 meters away from her residence^[20] when she was stricken with deep chest pain^[21] and experienced dizziness; her vision blurred and "the right part of (her) body (became) heavy" to the point that she "could not move anymore." At this point, she collapsed and lost consciousness.^[22]

In the afternoon of the same day, she found herself in a hospital bed of St. Paul's Hospital located about a block away from petitioner's residence. Upon inquiry, she was informed that a certain Metro Tacloban Aide by the name of Teresa Lorenzo came to her rescue when she fainted, assisted in rushing her to the hospital, and informed her family about Agullo's dire condition and the unfortunate event that befell her.^[23] Petitioner was confined in St. Paul's Hospital for over a week - from 22 October 1985 to 01 November 1985^[24] - under the care of her attending physician, Dr. Juan Abando, who issued the corresponding Medical Certificate pregnant with the following findings:

"X X X Hypertension complicated with Cerebro Vascular Accident (CVA), Rt. Hemiparesis and Urinary Infection.

"Condition started apparently 20 hrs. before admission as moderate headache and dizziness, associated with blurring of vision and nausea. Fifteen hrs. prior to admission, she felt weakness of her right half of her body and slurring of speech. Had history of high blood pressure taken last April 1985. B/P= 190/120. On admission B/P= was 230/120; PR= 83/min.; RR= 20/min.

"Pertinent findings: conscious, coherent, slurred speech, rt.