

## **THIRD DIVISION**

**[ G.R. No. 119239, May 09, 2000 ]**

**FRANCISCO ENRIQUEZ Y CRUZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND SANDIGANBAYAN, RESPONDENTS.**

**[G.R. No. 119285]**

**CARMENCITA G. ESPINOSA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

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

**GONZAGA-REYES, J.:**

The instant petitions for review on certiorari seek the reversal of the Sandiganbayan's decision of February 28, 1995, in Criminal Case No. 14385, convicting herein petitioners Francisco C. Enriquez (ENRIQUEZ) and Carmencita G. Espinosa (ESPINOSA) of the crime of malversation of public funds, defined in Article 217(4) of the Revised Penal Code.

The essential antecedents as can be gathered from the documentary and testimonial evidence are the following:

ENRIQUEZ was Municipal Treasurer, while ESPINOSA was Administrative Officer and acting Municipal Cashier of the Office of the Municipal Treasurer of Pasig (Pasig Treasury). By virtue of Local Government Audit Order No. 88-01-3, an audit team headed by Carmencita Antasuda as team leader conducted an audit examination of the cash and accounts of the Pasig Treasury covering the period from May 4, 1987 to November 30, 1987. The audit disclosed, among other things, "accused Enriquez's accounts contained a shortage amounting to P3,178,777.41, which shortage was mainly due to a dishonored China Banking Check No. 303100 dated October 7, 1987 in the amount of P3,267,911.10." Said check was deposited with the Quezon City District Treasury Office (Quezon City Treasury) as part of the collections of the Pasig Treasury. The check was dishonored for the following reasons: (a) it was not received in payment of any tax; (b) it was not acknowledged by an official receipt; (c) the account against which it was drawn was under garnishment; (d) the signatory therein was not authorized to sign; and (e) it was drawn against insufficient funds.

On December 3, 1987, a letter of demand was sent to ENRIQUEZ by the Commission on Audit (COA) to reconstitute the value of the dishonored check. In a reply dated December 5, 1987, ENRIQUEZ denied responsibility for the shortage and pointed to ESPINOSA as the one to whom the letter of demand should be addressed as the custodian of said check

China Banking Check No. 303100 dated October 7, 1987 in the amount of P3,267,911.10 was payable to the Municipal Treasurer of Pasig and was drawn by one "D. Noble". The check bears ENRIQUEZ's indorsement at the back and was accompanied by a statement of checks also bearing the initials of ENRIQUEZ. The subject check was transmitted from the Pasig Treasury to the Quezon City Treasury as the official district treasury for municipal deposits. According to Benito Buenviaje, a casual janitor of the Pasig Treasury, on October 15, 1987, ENRIQUEZ instructed him to get the bundled checks from his table and to deliver them to the Quezon City Treasury. He could not recall how many checks were taken from the table of the municipal treasurer because they were already bundled. Benito Buenviaje was issued two official receipts, one of which, O. R. No. 279451, was in the amount of P3,308,774.44, and included the amount of the dishonored check.

Several days after, the Quezon City Treasury informed the Pasig Treasury of the dishonor of CBC Check No. 303100. The check was deposited by the Quezon City Treasury under Account No. 6 with the PNB, Cubao Branch, for credit to the Pasig Treasury but it was dishonored and returned on October 21, 1987 for the reasons above-mentioned.

The then Mayor Mario Raymundo of Pasig sent a letter-request to the NBI to conduct an investigation of the alleged shortage and Atty. Federico Opinion, Jr., Chief of the Special Action Unit of the NBI was designated, together with two (2) other agents to conduct the investigation. As found by the NBI, the drawer of subject check was a certain "D. Noble", with the account (CBC No. 0026813-6) registered in the name of one Leonora Reyes of EDSA Home Improvement Center, Inc. In the course of the investigation, Atty. Opinion furnished Eliodoro Constantino, Senior Document Examiner of the NBI, the initials of accused Enriquez appearing in the subject check and the statement of checks, together with standards of comparison consisting of several documents. A comparative examination by the NBI Questioned Document Expert of the specimens submitted revealed that the questioned and standard sample specimen initials of ENRIQUEZ were not written by one and the same person.

It appears that less than a month before the dishonor of the subject check or on September 23, 1987, ESPINOSA herself had gone to the Quezon City Treasury to make a deposit of checks and statement of checks. Felisa Cervantes, Computer Operator of the Quezon City Treasury, accepted the checks and the corresponding statements and issued Official Receipt No. 279339 in the amount of P3,583,084.18. ESPINOSA later returned to Felisa Cervantes and requested her to cross-out the first figure "3" on the official receipt to conform with the actual amount of P583,084.18 deposited therein.

In an Information dated February 5, 1990, ENRIQUEZ together with ESPINOSA were charged with Malversation of Public Funds committed as follows:

"That during the period from May 4, 1987 to November 30, 1987, or on dates subsequent thereto, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused Francisco C. Enriquez being then the Municipal Treasurer of Pasig, Metro Manila, Carmencita Espinosa then the Administrative Officer I and designated as Cashier in the Office of the Municipal Treasurer of Pasig, Metro Manila and Belinda Santos<sup>[1]</sup>, a Clerk in the Realty Tax

Section and designated as Asst. Cashier in the Treasurer's Office of Pasig, Metro Manila, duly appointed/designated and qualified as such, hence, all accountable officers by reason of the duties of their respective offices, accountable for the funds and properties received by them in their official positions as such, conspiring and confederating with each other and taking advantage of their official positions with wanton disregard of auditing laws, rules and regulations, did then and there willfully, unlawfully and feloniously and with grave abuse of confidence, misappropriate, misapply and convert to their own personal use and benefit the amount of THREE MILLION ONE HUNDRED SEVENTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY-SEVEN AND 41/100 (P3,178,777.41), Philippine currency, from the said public funds received by them in their respective official positions aforementioned in the Office of the Municipal Treasurer of Pasig, Metro Manila, to the damage and prejudice of the government.

CONTRARY TO LAW."<sup>[2]</sup>

When arraigned, on April 23, 1990, ENRIQUEZ and ESPINOSA pleaded not guilty to the charge. After trial, the Sandiganbayan rendered its judgment, promulgated on February 28, 1995, convicting ENRIQUEZ and ESPINOSA, thusly:

"WHEREFORE, judgment is hereby rendered finding both accused Francisco Enriquez y Cruz and Carmencita Espinosa y Gonzales GUILTY beyond reasonable doubt as co-principals in the offense of Malversation of Public Funds, as defined and penalized under Article 217, paragraph 4 of the Revised Penal Code and crediting each of them with the mitigating circumstance of voluntary surrender, without any aggravating circumstance in offset, and applying the Indeterminate Sentence Law, each of them is hereby sentenced to suffer the indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor, as the minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as the maximum; to further suffer perpetual special disqualification; to pay, jointly and severally, the Government of the Republic of the Philippines in the same amount of P3,178,177.41, and to pay their proportional share of the costs of the action.

SO ORDERED."<sup>[3]</sup>

Accused ENRIQUEZ and ESPINOSA blamed each other for the shortage. ENRIQUEZ tried to show that he is not the custodian of the funds of the municipality and that it is ESPINOSA and the deceased co-accused Belinda Santos who had custody and safekeeping over the funds and the keys to the vault. For her part, ESPINOSA claimed that it was accused ENRIQUEZ and Imelda San Agustin, the duly appointed cashier who are the ones responsible for the alleged shortage. The Sandiganbayan found that ENRIQUEZ and ESPINOSA in conspiracy with each other misappropriated public funds in their custody and sought to cover up the shortages already existing in the municipal treasury's collections by depositing the subject China Banking Corporation check in the amount of P3,178,777.41. The Sandiganbayan, in its assailed decision, ratiocinated thus:

"xxx      xxx      xxx.

From the narration of the evidence, testimonial and documentary, adduced by both accused Enriquez and Espinosa in their defense, it appears that certain circumstances of paramount importance have been ignored or overlooked by the defense, considering the foregoing admitted facts on record, which are, that the instant prosecution is for Malversation of Public funds and that once a shortage in said funds had been established, it is the accountable officer (or officers) who bear(s) the obligation to submit a satisfactory explanation as to why he (or they) should not be held accountable therefor (Article 217, Revised Penal Code).

These circumstances have not been thoroughly nor diligently delved into by either of the accused, who were apparently more concentrated in pointing to each other and shifting the blame for the appearance and/or introduction into the municipal treasurer's accounts of a check in the amount of P3,267,911.10 drawn against the China Banking Corporation, dated October 7, 1987 (Exhibit E). As testified to by prosecution witness Auditor Carmelita Antasuda, said check was made to form part of the collections of the municipal treasurer, sometime in October 1987, despite the fact that there was no official receipt appearing to have been issued for it and neither does it appear to have been issued in payment of taxes or obligations due to the municipality of Pasig. Afterwards, said check, bearing accused Enriquez' indorsement at the back, was included in a statement of checks (Exhibit P) prepared in the Pasig Municipal Treasurer's Office for transmittal to, and deposit with, the Quezon City Treasurer's Office, the latter being the official district treasury for municipal deposits.

The statement of the checks (Exhibit P), together with the check in question (Exhibit E), and another statement of checks (Exhibit 7-Espinosa) was admittedly brought by Benito Buenviaje, a casual janitor in the municipal treasurer's office, upon the instruction of accused Enriquez to the Quezon City Treasurer's Office and received thereat on October 15, 1987. Buenviaje was issued two official receipts, one of which, O. R. No. 279451 (Exhibit 7-b-Enriquez), was in the amount of P3,308,774.44, which included the dishonored check (Exhibit M-1, Page 2 par. 3). The check was deposited by the Quezon City Treasury Office under Account No. 6 with the PNB, Cubao, Branch, for credit to the Pasig municipal treasury but it was dishonored and returned on October 21, 1987 because the account was under garnishment and the check had an unauthorized signatory (Exhibit E-2). As found by the NBI, the drawer of the said check was a certain "D. Noble", with the account (CBC No. 0026813) being in the name of one Leonora Reyes of EDSA Home Improvement Center, Inc. (Exhibit M-1, page 3, par. 5).

Hence, as of October 15, 1987, the municipal collections had a virus fatally imbedded within it, a wayward private check which cannot lawfully be credited to the municipal treasury or to the accountability of either of the accused herein, as primary and secondary accountable officers. Worse, on September 23, 1987, accused Espinosa had tried to foist a similar scam by personally bringing to the District Treasury in Quezon City bundles of checks listed in three (3) statements of checks, dated

September 15, 1987 and signed by accused Enriquez, totaling P583,084.18 (Exhibits 22, 22-a and 22-b-Espinosa). While the total amount on the adding machine tapes when presented, was P3,583,084.18, as testified to by Maria Felisa Cervantes (TSN, pp. 6-31, May 21, 1991), with accused Espinosa being issued Official Receipt No. 279339 (Exhibits 11-to11-d-Enriquez), she later returned to Cervantes and said she had committed a mistake and had Cervantes cross out the figure '3' in said receipt to conform with the actual amount of the checks which was P583,084.18 only.

Coupled with the same scenario that transpired on October 15, 1987 with respect to the dishonored CBC Check in the amount of P3,267,911.10 (Exhibit E), which likewise reached the Quezon City Treasurer's Office thru a statement of checks signed by accused Enriquez (Exhibit P), then it can logically be presumed that during the months of September and October, 1987, both accused Enriquez and Espinosa were already aware of an impending shortage in their accountabilities in the neighborhood of P3-million and were attempting to conceal or cover-up this shortage through the same modus operandi.

The audit examination which was conducted on December 1, 1987 (Exhibit D) covered the period from May 4, 1987 to November 30, 1987. The shortage of P3,178,777.41 was arrived at as follows:

"Accountability:

Beginning Balance, May 4, 1987	P 17,843,0007.26
Add: Collections and Withdrawals	<u>184,065.858.18</u>
Total	P 201,908,865.44
Less: Disbursements and Deposits	194,433,214.14
Balance of Accountability	P 7,475,651.30
Cash and Valid Cash Items	<u>4,296,873.89</u>
Shortage	P 3,178,177.41
The shortage is accounted for as follows:	
Disallowed cash item CBC	P 3,267,911.10
Check #303100	
Overrecording of withdrawals	( 100,018.10)
Underrecording of withdrawals	10,001.18
Overremittance of collections	( 539.00)
Overrecording of deposits	10.40
Overfooting of expenditures	.53
Overfooting of collections	( .04)
Underfooting of collections	<u>(.80</u>
Total	P 3,178,777.42

It would appear probable, therefore, that even as early as May and prior to October 15, 1987, the shortage had already existed in the municipal accounts, traceable to and aggravated by over-recording/under-recording