

FIRST DIVISION

[G.R. No. 121099, February 17, 1999]

**FIDEL T. SALAMERA, PETITIONER, VS. SANDIGANBAYAN, FIRST
DIVISION, RESPONDENT.**

D E C I S I O N

PARDO, J.:

The case is an appeal *via certiorari* taken by petitioner from a decision of the Sandiganbayan and its resolution convicting him of malversation of public property defined and penalized in Article 217 in relation to Article 222 of the Revised Penal Code, and appreciating the mitigating circumstance of full restitution, imposing upon him the indeterminate sentence of two (2) years four (4) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum; the penalty of perpetual special disqualification, and a fine of P5,000.00, the value of the .38 Cal. Smith & Wesson Revolver, with Serial No. 879886.

We reverse.

The facts may be related as follows:

On February 2, 1988, petitioner was elected to and assumed the position of mayor of the municipality of Casiguran, province of Aurora.

Later that month, he received from Casiguran Barangay Captain^[1] Antonio Benavidez one .38 Caliber Smith & Wesson Revolver, with Serial No. 879886. The gun was owned by and licensed to Ponciano Benavidez, an uncle of Antonio, who mortgaged it to him. Petitioner placed the gun in an attache case.

After about a week, petitioner together with his security men, went to Manila, and brought with them the attache case with the gun in it. On their return to the province, their car was stopped at a spot checkpoint in Quezon City, where Pat. Alfredo B. Villanueva of the Quezon City Police saw the revolver. On petitioner's instruction, his security men surrendered the gun to police officer Villanueva.

Back in the municipality of Casiguran, Ponciano Benavidez, the licensed owner of the gun claimed it from petitioner. The latter informed Ponciano that the gun was confiscated by the Quezon City Police.

On September 30, 1988, Ponciano Benavidez filed with the office of the Provincial Prosecutor of Aurora a complaint for theft against petitioner and Antonio Benavidez.

On December 13, 1988, Ponciano Benavidez filed with the Department of Local Government, an administrative complaint against petitioner for abuse of authority,

ignorance of the law and conduct unbecoming of a public servant.

On January 20, 1989, the Provincial Prosecutor of Aurora dismissed the case for theft.

On April 6, 1989, complainant Ponciano Benavidez filed a complaint for theft against petitioner with the Office of the Ombudsman in Manila.

On August 21, 1990, during the investigation of the administrative case by the Sangguniang Panlalawigan of Aurora, complainant Ponciano Benavidez executed an affidavit of desistance acknowledging that petitioner had paid the value of the gun, and withdrawing the administrative case and the criminal case he filed against petitioner with the Ombudsman.

On August 22, 1990, the Sangguniang Panlalawigan approved a resolution dismissing the administrative case against petitioner.

On March 9, 1992, the Ombudsman approved the filing by Special Prosecution Officer Prospero G. Pelayo of an information against petitioner for malversation of public funds, which was duly filed on March 12, 1992, with the Sandiganbayan, Manila.

On March 30, 1992, the Sandiganbayan issued a warrant of arrest. On March 30, 1992, petitioner posted a cash bail of P20,000.00, which he deposited with the provincial treasurer of Aurora, duly approved by Regional Trial Court Judge Filemon N. Tan of Baler, Aurora.^[2]

Upon arraignment on June 1, 1992, before the Sandiganbayan, First Division, petitioner entered a plea of not guilty, and accordingly, the court scheduled the case for pre-trial conference.

Meantime, on or about August 14, 1992, petitioner was able to contact Pat. Villanueva in Camp Karingal, Quezon City. The latter said that he returned the gun to Patrolman Orgas, one of petitioner's security men on the very next day after he had confiscated it. Unfortunately, Pat. Orgas did not inform petitioner about the recovery of the gun, and, at the time Villanueva so informed petitioner, Pat. Orgas had died.

At the pre-trial conference held on August 28, 1992, the prosecution and the accused (petitioner herein) assisted by *counsel de parte*, entered into a stipulation of facts signed by them, as follows:

1. At all times relevant to this case, the accused was the Mayor of the Municipality of Casiguran, Aurora;
2. That in the exercise of his functions as Mayor, the accused had the occasion to confiscate one .38 caliber Smith & Wesson revolver with Serial No. 879886 from Barangay Captain Antonio Benavidez;
3. This weapon was actually owned by Ponciano Benavidez, the value of which the parties have not agreed upon;

4. That the accused confiscated this weapon in the performance of his official functions and was, therefore, in custody thereof in his capacity as such;
5. That demand was made from the accused by Ponciano Benavidez sometime in June of 1988 to produce the above-mentioned firearm but the accused failed to do so;
6. That at a subsequent time, the accused and Ponciano Benavidez went to the offices of the Quezon City Police Department in search of this weapon;
7. That there has been restitution of the value of the firearm by the accused to the complaining witness Ponciano Benavidez although there is disagreement as to the amount of the restitution;
8. That the following affidavits were executed:
 - a. By complaining witness Ponciano Benavidez indicating his desistance from further prosecution thereof for reasons stated therein;
 - b. By Alfredo Villanueva of the Quezon City Police Department purporting to describe the circumstances under which he allegedly confiscated the weapon in question from the accused Mayor.

Further to the above stipulations, the Government now marks the following exhibit which is admitted by the accused:

Exhibit "A" - a xerox copy of the License to Carry Firearm No. 0188490, issued by Necesitas Katigbak of the Firearm and Explosives Unit, to Ponciano Benavidez involving .38 caliber Smith & Wesson revolver with SN 879886.

The accused for his part has marked the following exhibits:

Exhibit "1" - The Order of the Fiscal dated January 20, 1989, dismissing the charge of Theft, which is Annex "1" to the Supplemental Affidavit;

Exhibit "2" - The administrative complaint filed by the complaining witness dated December 13, 1988, which is Annex "2" to the Supplemental Affidavit;

Exhibit "3" - The Complaint for the filing of the case before the Ombudsman on April 6, 1989, which is Annex "3" to the Supplemental Affidavit;

Exhibit "4" - The investigation before the Sangguniang Panlalawigan dated August 21, 1990 at Baler, Aurora, wherein the owner of the gun submitted his affidavit of desistance and admitting therein that he was paid for the loss of the gun, which is Annex "4" to the Supplemental Affidavit;

Exhibit "5" - the Affidavit of Desistance executed by the owner of the gun dated August 21, 1990, marked as Annex "5" to the Supplemental Affidavit, wherein the owner of the gun admitted that he verified the loss of the gun to be true and also admitted that the equivalent amount in cash and in kind for the .38 caliber revolver was paid to him, for which he promised to dismiss the criminal case and the administrative case.

Exhibit "6" - the Minutes of the Sangguniang Panlalawigan of Aurora dated August 22, 1990, which decided to dismiss the administrative case, which is marked as Annex "6" to the Supplemental Affidavit;

Exhibit "7" - the Resolution of the Investigating Fiscal for the Ombudsman dated February 24, 1992, which is marked as Annex "7" to the Supplemental Affidavit;

Exhibit "8" - the Resolution of the Ombudsman, which is marked as Annex "8" to the Supplemental Affidavit;

Exhibit "9" - a copy of the Order of Arrest issued by the Sandiganbayan, marked as Annex "9" to the Supplemental Affidavit;

Exhibit "10" - the payment of the Bond for the provisional release of the accused, marked as Annex "10" to the Supplemental Affidavit;

Exhibit "11" - the Joint Affidavit of the Chairman of the Sangguniang Panlalawigan and a certain Angelito Salamera stating that they were present when payment was made for the gun to the owner, which is marked as Annex ""11" to the Supplemental Affidavit;

Exhibit "12" - the Affidavit executed by Alfonso Villanueva dated August 14, 1992, wherein he admitted that he had confiscated the gun at a checkpoint in Quezon City, which is marked as Annex "12" to the Supplemental Affidavit;

Exhibit "13" - the Affidavit executed by Antonio Benavidez dated July 30, 1989, which is marked as Annex "13" to the Supplemental Affidavit.

On June 30, 1993, the prosecution formally presented as its evidence Exhibit "A"^[3] and upon the admission thereof, rested its case.

On the other hand, the defense presented two (2) witnesses including petitioner.

After the testimony of the witnesses on July 21, 1993, the court gave the defense counsel ten (10) days to formally offer his evidence in writing. In time, the defense formally offered its exhibits, and on September 6, 1993, the court admitted all exhibits except Exhibits 11 and 13, which were rejected for being hearsay.

On February 17, 1995, more than a year after the case was submitted for decision, the Sandiganbayan promulgated its decision, the decretal portion of which is narrated in the opening paragraph of this opinion.

On March 3, 1995, petitioner filed a motion for reconsideration of the decision;