



Republic of the Philippines  
**Supreme Court**

Manila

**THIRD DIVISION**

**ARNOLD JAMES M. YSIDORO,**  
Petitioner,

**G.R. No. 192330**

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
PERALTA,  
ABAD,  
PEREZ,<sup>\*</sup> and  
MENDOZA, JJ.

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

Promulgated:

14 November 2012 *McCormick*

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**DECISION**

**ABAD, J.:**

This case is about a municipal mayor charged with illegal diversion of food intended for those suffering from malnutrition to the beneficiaries of reconstruction projects affecting the homes of victims of calamities.

**The Facts and the Case**

The Office of the Ombudsman for the Visayas accused Arnold James M. Ysidoro before the Sandiganbayan in Criminal Case 28228 of violation of illegal use of public property (technical malversation) under Article 220 of the Revised Penal Code.<sup>1</sup>

The facts show that the Municipal Social Welfare and Development

<sup>\*</sup> Designated Acting Member, per Special Order 1299 dated August 28, 2012.

<sup>1</sup> Records, p. 1.

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Office (MSWDO) of Leyte, Leyte, operated a Core Shelter Assistance Program (CSAP) that provided construction materials to indigent calamity victims with which to rebuild their homes. The beneficiaries provided the labor needed for construction.

On June 15, 2001 when construction for calamity victims in *Sitio Luy-a, Barangay Tinugtogan*, was 70% done, the beneficiaries stopped reporting for work for the reason that they had to find food for their families. This worried Lolita Garcia (Garcia), the CSAP Officer-in-Charge, for such construction stoppage could result in the loss of construction materials particularly the cement. Thus, she sought the help of Cristina Polinio (Polinio), an officer of the MSWDO in charge of the municipality's Supplemental Feeding Program (SFP) that rationed food to malnourished children. Polinio told Garcia that the SFP still had sacks of rice and boxes of sardines in its storeroom. And since she had already distributed food to the mother volunteers, what remained could be given to the CSAP beneficiaries.

Garcia and Polinio went to petitioner Arnold James M. Ysidoro, the Leyte Municipal Mayor, to seek his approval. After explaining the situation to him, Ysidoro approved the release and signed the withdrawal slip for four sacks of rice and two boxes of sardines worth ₱3,396.00 to CSAP.<sup>2</sup> Mayor Ysidoro instructed Garcia and Polinio, however, to consult the accounting department regarding the matter. On being consulted, Eldelissa Elises, the supervising clerk of the Municipal Accountant's Office, signed the withdrawal slip based on her view that it was an emergency situation justifying the release of the goods. Subsequently, CSAP delivered those goods to its beneficiaries. Afterwards, Garcia reported the matter to the MSWDO and to the municipal auditor as per auditing rules.

On August 27, 2001 Alfredo Doller, former member of the Sangguniang Bayan of Leyte, filed the present complaint against Ysidoro.

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<sup>2</sup> Id. at 250.

Nierna Doller, Alfredo's wife and former MSWDO head, testified that the subject SFP goods were intended for its target beneficiaries, Leyte's malnourished children. She also pointed out that the Supplemental Feeding Implementation Guidelines for Local Government Units governed the distribution of SFP goods.<sup>3</sup> Thus, Ysidoro committed technical malversation when he approved the distribution of SFP goods to the CSAP beneficiaries.

In his defense, Ysidoro claims that the diversion of the subject goods to a project also meant for the poor of the municipality was valid since they came from the savings of the SFP and the Calamity Fund. Ysidoro also claims good faith, believing that the municipality's poor CSAP beneficiaries were also in urgent need of food. Furthermore, Ysidoro pointed out that the COA Municipal Auditor conducted a comprehensive audit of their municipality in 2001 and found nothing irregular in its transactions.

On February 8, 2010 the Sandiganbayan found Ysidoro guilty beyond reasonable doubt of technical malversation. But, since his action caused no damage or embarrassment to public service, it only fined him ₱1,698.00 or 50% of the sum misapplied. The Sandiganbayan held that Ysidoro applied public property to a public purpose other than that for which it has been appropriated by law or ordinance. On May 12, 2010 the Sandiganbayan denied Ysidoro's motion for reconsideration. On June 8, 2010 Ysidoro appealed the Sandiganbayan Decision to this Court.

### **The Questions Presented**

In essence, Ysidoro questions the Sandiganbayan's finding that he committed technical malversation. He particularly raises the following questions:

1. Whether or not he approved the diversion of the subject goods to a public purpose different from their originally intended purpose;

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<sup>3</sup> Id. at 260-329.

2. Whether or not the goods he approved for diversion were in the nature of savings that could be used to augment the other authorized expenditures of the municipality;

3. Whether or not his failure to present the municipal auditor can be taken against him; and

4. Whether or not good faith is a valid defense for technical malversation.

### The Court's Rulings

**One.** The crime of technical malversation as penalized under Article 220 of the Revised Penal Code<sup>4</sup> has three elements: a) that the offender is an accountable public officer; b) that he applies public funds or property under his administration to some public use; and c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance.<sup>5</sup> Ysidoro claims that he could not be held liable for the offense under its third element because the four sacks of rice and two boxes of sardines he gave the CSAP beneficiaries were not appropriated by law or ordinance for a specific purpose.

But the evidence shows that on November 8, 2000 the Sangguniang Bayan of Leyte enacted Resolution 00-133 appropriating the annual general fund for 2001.<sup>6</sup> This appropriation was based on the executive budget<sup>7</sup>

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<sup>4</sup> Art. 220. *Illegal use of public funds or property.* — Any public officer who shall apply any public fund or property under his administration to any public use other than for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.

<sup>5</sup> *Parungao v. Sandiganbayan*, 274 Phil. 451, 460 (1991).

<sup>6</sup> Records, pp. 258-259.

<sup>7</sup> SEC. 318. *Preparation of the Budget by the Local Chief Executive.* — Upon receipt of the statements of income and expenditures from the treasurer, the budget proposals of the heads of departments and offices, and the estimates of income and budgetary ceilings from the local finance committee, **the local chief executive shall prepare the executive budget for the ensuing fiscal year in accordance with the provisions of this Title. The local chief executive shall submit the said executive budget to the sanggunian concerned** not later than the sixteenth (16th) of October of the current fiscal year. Failure to submit such budget on the date prescribed herein shall subject the local chief executive to such criminal and administrative penalties as provided for under this Code and other applicable laws. (Emphasis supplied)

SEC. 319. *Legislative Authorization of the Budget.* — On or before the end of the current fiscal year, the sanggunian concerned shall enact, through an ordinance, the annual budget of the local government unit for the ensuing fiscal year on the basis of the estimates of income and expenditures submitted by the local chief executive.

which allocated ₱100,000.00 for the SFP and ₱113,957.64 for the Comprehensive and Integrated Delivery of Social Services<sup>8</sup> which covers the CSAP housing projects.<sup>9</sup> The creation of the two items shows the Sanggunian's intention to appropriate separate funds for SFP and the CSAP in the annual budget.

Since the municipality bought the subject goods using SFP funds, then those goods should be used for SFP's needs, observing the rules prescribed for identifying the qualified beneficiaries of its feeding programs. The target clientele of the SFP according to its manual<sup>10</sup> are: 1) the moderately and severely underweight pre-school children aged 36 months to 72 months; and 2) the families of six members whose total monthly income is ₱3,675.00 and below.<sup>11</sup> This rule provides assurance that the SFP would cater only to the malnourished among its people who are in urgent need of the government's limited resources.

Ysidoro disregarded the guidelines when he approved the distribution of the goods to those providing free labor for the rebuilding of their own homes. This is technical malversation. If Ysidoro could not legally distribute the construction materials appropriated for the CSAP housing beneficiaries to the SFP malnourished clients neither could he distribute the food intended for the latter to CSAP beneficiaries.

**Two.** Ysidoro claims that the subject goods already constituted savings of the SFP and that, therefore, the same could already be diverted to the CSAP beneficiaries. He relies on *Abdulla v. People*<sup>12</sup> which states that funds classified as savings are not considered appropriated by law or ordinance and can be used for other public purposes. The Court cannot accept Ysidoro's argument.

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<sup>8</sup> Records, p. 254.

<sup>9</sup> TSN, May 23, 2006, p. 15 (*rollo*, pp. 127-128) and TSN, August 2, 2007, pp. 15-16 (*rollo*, p. 130).

<sup>10</sup> Guidelines on the Management of CRS Supported Supplemental Feeding Program Implemented by the Local Government Units; Sandiganbayan *rollo*, Vol. I, pp. 260-329.

<sup>11</sup> *Id.* at 263.

<sup>12</sup> 495 Phil. 70 (2005).

The subject goods could not be regarded as savings. The SFP is a continuing program that ran throughout the year. Consequently, no one could say in mid-June 2001 that SFP had already finished its project, leaving funds or goods that it no longer needed. The fact that Polinio had already distributed the food items needed by the SFP beneficiaries for the second quarter of 2001 does not mean that the remaining food items in its storeroom constituted unneeded savings. Since the requirements of hungry mouths are hard to predict to the last sack of rice or can of sardines, the view that the subject goods were no longer needed for the remainder of the year was quite premature.

In any case, the Local Government Code provides that an ordinance has to be enacted to validly apply funds, already appropriated for a determined public purpose, to some other purpose. Thus:

SEC. 336. *Use of Appropriated Funds and Savings.* – Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

The power of the purse is vested in the local legislative body. By requiring an ordinance, the law gives the Sanggunian the power to determine whether savings have accrued and to authorize the augmentation of other items on the budget with those savings.

**Three.** Ysidoro claims that, since the municipal auditor found nothing irregular in the diversion of the subject goods, such finding should be respected. The SB ruled, however, that since Ysidoro failed to present the municipal auditor at the trial, the presumption is that his testimony would have been adverse if produced. Ysidoro argues that this goes against the rule

on the presumption of innocence and the presumption of regularity in the performance of official functions.

Ysidoro may be right in that there is no basis for assuming that had the municipal auditor testified, his testimony would have been adverse to the mayor. The municipal auditor's view regarding the transaction is not conclusive to the case and will not necessarily negate the mayor's liability if it happened to be favorable to him. The Court will not, therefore, be drawn into speculations regarding what the municipal auditor would have said had he appeared and testified.

**Four.** Ysidoro insists that he acted in good faith since, first, the idea of using the SFP goods for the CSAP beneficiaries came, not from him, but from Garcia and Polinio; and, second, he consulted the accounting department if the goods could be distributed to those beneficiaries. Having no criminal intent, he argues that he cannot be convicted of the crime.

But criminal intent is not an element of technical malversation. The law punishes the act of diverting public property earmarked by law or ordinance for a particular public purpose to another public purpose. The offense is *mala prohibita*, meaning that the prohibited act is not inherently immoral but becomes a criminal offense because positive law forbids its commission based on considerations of public policy, order, and convenience.<sup>13</sup> It is the commission of an act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Hence, malice or criminal intent is completely irrelevant.<sup>14</sup>

*Dura lex sed lex.* Ysidoro's act, no matter how noble or miniscule the amount diverted, constitutes the crime of technical malversation. The law

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<sup>13</sup> FLORENZ REGALADO, CRIMINAL LAW CONSPECTUS (2003 rev. ed), citing *People v. Pavlic*, 227 Mich., 563, N.W. 371, 35 ALR.

<sup>14</sup> *Luciano v. Estrella*, 145 Phil. 454, 464-465 (1970).


and this Court, however, recognize that his offense is not grave, warranting a mere fine.

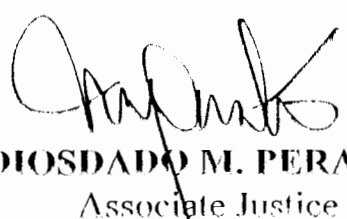
**WHEREFORE**, this Court **AFFIRMS** in its entirety the assailed Decision of the Sandiganbayan in Criminal Case 28228 dated February 8, 2010.

**SO ORDERED.**

  
**ROBERTO A. ABAD**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

  
**DIOSDADO M. PERALTA**  
Associate Justice

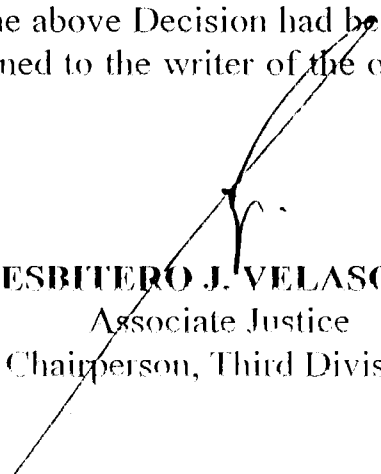
  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice



***ATTESTATION***

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

***CERTIFICATION***

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice