

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMELIA DE PABLO GUTIERREZ, ACCUSED-APPELLANT.

Ponente: BARRIOS, J.

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BARRIOS, J.:

Our appellant Amelia de Pablo Gutierrez (or Gutierrez for brevity) had been in government service for some years, and was the Revenue Collection Clerk III of Balayan, Batangas in 1998 when the boom was lowered on her for having taken liberties with the government's kitty placed in her hands. She was charged by the Ombudsman before the Regional Trial Court of Balayan, Batangas with seven (7) counts of Malversation of Public Funds defined and penalized under Art. 217 of the Revised Penal Code which were docketed as Crim. Cases Nos. 4463, 4464, 4465, 4466, 4467, 4468, 4469, 4470 and 4471. The Informations were similarly worded, except in their peculiar specifics. That in Crim. Case No. 4463 reads:

That on the year 1998, in the Municipality of Balayan, Batangas and within the jurisdiction of this Honorable Court, abovenamed accused, AMELIA DE PABLO GUTIERREZ, Revenue Collection Clerk III, and as such, is accountable for the public funds received by her in the discharge of her functions, did then and there, willfully, unlawfully, misapply, embezzle and convert to her personal use the amount of ONE HUNDRED THREE THOUSAND, NINE HUNDRED AND EIGHTY NINE PESOS and FIFTY NINE CENTAVOS (P103,989.59), which amount she failed to have duly forthcoming, upon demand by a duly authorized officer, to the damage and prejudice of the government in the aforestated amount.

CONTRARY TO LAW. (p. 1, record)

When arraigned Gutierrez pleaded Not Guilty to all charges. Pre-trial was conducted, but the record is bereft of information of what had transpired beyond the statement that it was terminated. At the trial the prosecution presented two witnesses, namely: Erlinda Maranan, Revenue Collection III of the Provincial Auditor's Office and Elenita Vergara, State Auditor II. It submitted documents marked Exhibits from "A" thru "OO" with their respective submarkings as follows: "A" - Memorandum dated June 29, 1995 detailing the duties and responsibilities of the accused as liquidating officer; "B" thru "H" - Reports of Cash Examination; "I" thru "K" - Reports of Accountable Forms with Money Value; "L" thru "O" - Records/Statements of Accountability; "P" List of Missing Official Receipts; "Q" thru "AA" - Daily Statement of Collections and Accountable Forms' "BB" thru "OO" - various official receipts.

On her part, Gutierrez presented herself as her only witness and submitted only one documentary evidence, Exhibit "1", the official receipt evidencing her payment of the amount of P109,989.59 corresponding to the full amount subject matter of all the seven (7) cases.

The prosecution's evidence established that the accused Gutierrez was designated as liquidating officer under the Office of the Municipal Treasurer of Balayan, Batangas. Among her duties as such were to:

1. Verify the Daily Statement of Collections and Accountable Forms (DSCAF), check the statement of accountable forms as to initial balances on hand, receipts, sales and issues, and new balances on hand, make a physical count of the accountable forms remaining in the custody of the collector and check the same to the new

balances on hand column. Indicate verification by affixing signature at the back of the triplicate copy of the last official receipt issued.

2. Prepare the Report of Collections by Liquidating Officer (RCLO), Provincial Form No. 225 (A) in four (4) copies to summarize the collections turned over by the collectors.
3. Turn over to the undersigned the cash collections intact before the close of business day.
4. Perform other duties asked by the undersigned. (Exh. "A")

On June 29, 1998, under Cash Examination Order No. 98-02 of the Provincial Auditor, an audit team from his office went to the place to examine the cash accounts of the Municipality of Balayan, Batangas and all the accountable officers. They proceeded to examine and audit cash on hand of the accountable officers especially the Disbursement Officer, Municipal Treasurer and Collecting Liquidating Officers, using several audit procedures and techniques.

In Crim. Case No. 4463, Maranan, leader of the audit team, described the audit procedures taken by their team as follows:

A. We undertake several audit technique such as account, inventory of accountable forms, verification of unrecorded vouchers as to each actual payment and proper recording post audit of collection, cross checking of formal collection department and report of issued checks issued to cash book, tracing of official receipts of collection, abstract of collections and such documents the daily statement of collections and accountable forms (DSCAF) retain by the collection as against the daily statements submitted by the Liquidating Officer and the Collectors. (She was introduced) We also conducted interview to the collectors and other persons related to audit to the Municipalities accounts, the amount actually paid by the tax payers, confirmation of remittances and bank reconciliation, sir.

With these steps, the audit team detected discrepancies and misappropriation of funds committed, and concluded that Gutierrez used her position and working knowledge to malverse the amounts the total of which reached P103,989.59.

From the audit conducted, they found that two Audit Officers namely appellant Amelia de Pablo Gutierrez and Adoracion Confirmado committed malversation of funds thru falsification of public documents. Based on their findings, they sent demand letters to the parties concerned and brought the matter to the information of the Municipal Mayor and Treasurer of Balayan. They filed the corresponding criminal charges against the erring officers before the Ombudsman. There the charges against Adoracion Confiado were dismissed, while those against Gutierrez prospered and became the said Crim. Cases Nos. 4463 to 4471.

It has been shown that at the end of the day the collectors remitted all the amounts they have collected to Gutierrez as liquidating officer, together with the duplicate of the official receipts and the Daily Statements of Collections and Accountable Forms (DSCAF) wherein stated are the total amount collected with the serial numbers of the official receipts issued, and the balance on hand. Gutierrez withheld certain amounts of the collections remitted to her by the collectors and changed the daily statement of collections and accountable forms to make these tally with what she remitted to the Municipal Treasurer. She falsified the signatures of the collectors in the daily statement of collection and accountable forms. By this scheme, Gutierrez was able to skim for her benefit sums which accumulated to P103,989.59. This she failed to turn over upon demand, and it was only much later when she coughed up the amount.

They saw through the scheme employed by Gutierrez by an examination of the post audit official receipts she prepared, and the daily statement of collections and accountable forms. In the latter, Gutierrez failed to mention

the amount of the beginning balance, that is the ending balance of the previous examination. From the accountable forms received during a specific period, post audited official receipts are deducted, i.e., issued official receipts compared with the actual accountable forms on stock with the Municipal Treasurer. The difference corresponds to the missing official receipts. Discrepancies on the post audit examination were detected because there were official receipts issued but there were no corresponding DSCAF for them. The team obtained triplicate copies of the official receipts for them to determine the exact amount as it cannot be gathered from an examination of the DSCAF alone because of the stratagem employed by Gutierrez. The triplicate copies of the receipts were signed by Gutierrez signifying her receipt of the amount reflected therein. At the end of each day, Gutierrez likewise signed the last receipt issued by the respective accountable officers in conformity with the rules and regulations.

Judgment was rendered by the trial court, holding that:

WHEREFORE, judgments hereby rendered finding the accused, AMELIA DE PABLO GUTIERREZ, GUILTY beyond reasonable doubt of the crime of MALVERSATION as charged in Criminal Case No. 4463 with two (2) mitigating circumstances to her merit, and hereby imposes the indeterminate penalty of SIX (6) YEARS AND ONE (1) DAY OF PRISION MAYOR as minimum to TEN (10) YEARS AND ONE (1) DAY OF PRISION MAYOR as maximum. In view of the restitution of the amount malversed, no fine is hereby imposed upon her, although the accused is directed to pay the costs of the suit.

As for Criminal Cases 4464, 4465, 4466, 4467, 4468 and 4469, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, the accused is hereby ACQUITTED of all these six (6) charges.

SO ORDERED. (p. 314, record)

In her appeal, Gutierrez assigns as reversible error that:

THE COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MALVERSATION. (Appellant's Brief, p. 62, rollo)

The essential elements of malversation are that: (1) the offender is a public officer; (2) he has the custody or control of funds or property by reason of the duties of his office; (3) the funds or property involved are public funds or property for which he is accountable; and (4) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence permitted, the taking by another person of such funds or property (People vs. Enfermo, G. R. No. 148682, Nov. 30, 2005). These the prosecution was able to prove beyond reasonable doubt, and mostly with admissions on the part of Gutierrez.

The defense of Gutierrez is essentially denial, claiming that the discrepancies went unnoticed by her because of the voluminous accounts and transactions. With this admission it became incumbent on Gutierrez to prove her defense by substantial evidence (People vs. Mantis, G. R. Nos. 150613-14, June 29, 2004). Testifying as the sole witness for her defense, Gutierrez admitted that daily collections for the municipality were given to her and which she was supposed to remit to the Treasurer at day's end. But when audited, it turned out that some of the sums were not remitted by her. Asked why, she explained that this was "Because the collections of the collectors are lacking, your Honor" (tsn July 22, 2003, p. 4). There were ten (10) collectors who were issued receipts by the municipality and submitted to her with their collections a Daily Statement of Collection. There were official receipts missing, but she does not know how or why, explaining that these receipts were so voluminous she could not check them all and she cannot recall as a long time has passed since then. The procedure was she was given only the duplicate of these receipts and which she then submitted to the cashier who in turn submitted these to the accounting department. Thus she cannot explain the supposed discrepancies. She denied having changed the amounts of the receipts. Asked why she paid albeit belatedly the charged shortage of P103,989.59, she said "The

reason why I paid the amount is because I don't want that this case to prolong in order not be elevated her in court (tsn July 22, 2003, p. 13).

The defense put up by Gutierrez is weak and fails to convince. It does not even overwhelm the prima facie presumption that she has put the missing funds to her personal use. Her belated surrender of the malversed amount does not serve to exonerate her for in malversation of public funds or estafa, payment, indemnification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability (*Felicilda vs. Grospe*, G. R. No. 102494, July 3, 1992). Rather it even confirms her guilt.

WHEREFORE, the appeal is DENIED and the appealed Decision is AFFIRMED.
SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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