

PAMELA CHAN, PETITIONER, VS. SANDIGANBAYAN, RESPONDENT.

G.R. NO. 149613. August 09, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

Petitioner Pamela Chan seeks a reversal of the Sandiganbayan decision of August 28, 2001 finding her guilty of Malversation of Public Funds under Article 217 of the Revised Penal Code.

In November 1989, petitioner was hired as Accounting Clerk II and assigned at the Regional Office of the National Bureau of Investigation (NBI) in Cebu City, discharging the function of Cashier or Collection Officer.

Petitioner went on leave from December 7 to 27, 1995. On December 27, 1995 Josephine Daclan, the auditor from the Commission on Audit (COA) assigned to the NBI, conducted a routine audit examination of the accountability of petitioner. Petitioner being then on leave, the audit was conducted upon Delza Bas (Bas) who was officially designated by the Regional Director to act as Collection Officer during her absence. The auditor found that all collections for the period beginning December 7, 1995 up to the date of the audit, December 27, 1995, were accounted for, as reflected in her Cash Report dated December 27, 1995 signed by Bas.

On January 24, 1996, the same auditor conducted another audit examination. Since petitioner had already reported for work, the audit covered the period beginning June 15, 1995. The auditor found a shortage of P290,228.00 in petitioner's cash accountability which was reflected in her Cash Report dated January 24, 1996 on which petitioner affixed her signature. The auditor thus issued a demand letter to petitioner to reconstitute the missing funds and explain the shortage. In a parallel move, she sent a memorandum to the Regional Director requesting that petitioner be immediately relieved of her assignment as Collecting Officer. Acting on the memorandum, the Regional Director issued a Special Order replacing petitioner with Gloria Alvarez effective March 1, 1996.

Since it is a standard operating procedure of the COA to conduct an audit examination whenever an accountable officer is replaced, an examination was conducted on March 1, 1996. As in the recently concluded audit, the period covered was from June 15, 1995 up to the date of the audit, March 1, 1996. The auditor found that petitioner had a cumulative shortage of cash accountability in the amount of P333,360.00 which was reflected in her Cash Examination Report dated March 1, 1996, signed by petitioner. Again the auditor issued a demand letter to petitioner requiring her to explain the shortage incurred, to which petitioner did not respond.

The COA Region VII thus filed a complaint against petitioner for Malversation of Public Funds in the amount of P333,360.00 with the Office of the Deputy Ombudsman (Visayas) on April 10, 1996. By Resolution dated February 18, 1997, said office found probable cause against petitioner and recommended the filing of the corresponding information against her.

Petitioner filed a Motion for Reconsideration of the Office of the Deputy Ombudsman's Resolution of February 18, 1997 and for Re-investigation of the case against her on the ground that the entire amount subject thereof should not be charged solely to her but also to Bas since the amount consisted, so she claimed, in part of "vales" received by Bas from her and of funds collected by Bas whenever she acted as collecting officer. The motion was

denied by Order dated July 28, 1997[1] bearing the approval of the Deputy Ombudsman, which order contained the following recommendation of the Graft Investigation Officer assigned to the case:

This office had ordered COA on June 24, 1996 to conduct a thorough re-audit of the cash and account of respondent and Delsa Bas covering the period from June 15, 1995 to March 1, 1996 to determine their respective cash accountabilities. In his letter-reply dated August 28, 1996 COA Director Santos M. Alquizalas intimated that a re-audit is not allowed under COA Memorandum 87-511 dated October 20, 1987. As far as COA is concerned, the audit examinations conducted by State Auditor III Josephine O. Daclan on December 27, 1995, January 24, 1996 and March 1, 1996 is deemed complete, thorough and based on documentary evidence. Finding no cogent reason nor sufficient justification to disturb the [February 18, 1997] resolution of this office sought to be reconsidered, it is respectfully recommended that the instant motion be denied for lack of merit.

x x x (Underscoring supplied)

Petitioner was thus indicted before the Regional Trial Court of Cebu City for Malversation of Public Funds allegedly committed as follows:

That on or about the 1[st] day of March, 1996 and for sometime prior thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being then the Collecting Officer of the National Bureau of Investigation (NBI), CEVRO, Cebu City, in such capacity and while in the performance of her official function was in the custody and possession of public funds, in the total amount of P333,360.00, for which she is accountable by reason of the duties of her office, with deliberate intent and with intent to gain, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate, embezzle and convert to her own personal use and benefit the said amount of P333,360.00 Philippine Currency, and despite notice and demands made upon her to account for said public funds, she has failed and refused and up to the present time still fails to do so, to the damage and prejudice of the government in the amount aforestated.[2] (Emphasis supplied)

Petitioner at once filed an Urgent Motion for Reinvestigation and to Hold in Abeyance the Issuance and/or Enforcement of a Warrant of Arrest on October 8, 1997 which was denied by the trial court, Branch 5 of the Cebu RTC, by Order dated October 17, 1997:[3]

x x x

The records show that the accused did not submit her counter-affidavit during the preliminary investigation despite the order of the Ombudsman. She did not also attend the clarificatory investigation. Thus, the matter sought by herein accused in her Motion For Reinvestigation was available to her during the preliminary investigation or in the clarificatory investigation.

During the hearing of accused' Motion in the afternoon of October 17, 1997 as originally scheduled, Director Virginia Santiago appeared and she opposed the Motion branding it as a dilatory ploy of the accused. She argued that accused was already afforded ample chance to controvert the evidence of the prosecution but she did not make use of it.

WHEREFORE, in view of the foregoing, the court hereby reconsiders its earlier verbal order granting the accused' Motion for Reinvestigation by denying it in view of the objection of the Office of the Deputy Ombudsman (Visayas). If the accused believes that she has strong evidence in her favor, the better trial technique is to go to trial and not to educate his opponent. x x x

On arraignment, petitioner pleaded "not guilty."

During the pendency of the case before the trial court, Bas remitted the amount of P60,787.00, while petitioner

remitted P89,760.82 which, to her, satisfied her obligations to the government in relation to the present case, the balance of P182,812.00 after deducting the total remittances being chargeable to Bas.[4]

By Judgment dated June 18, 1999,[5] the trial court found petitioner guilty beyond reasonable doubt of the crime charged, with the mitigating circumstance that she had no intention to commit so grave a wrong as that committed.

As the trial court credited petitioner's claim "that during the preliminary investigation, she was able to remit P150,000.00 to the government" and noted that such claim was not denied by the prosecution, it held that she had an unremitted balance of P183,360.00. The trial court accordingly sentenced petitioner to

x x x an indeterminate penalty of imprisonment from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years of reclusion temporal as maximum and to suffer the penalty of perpetual special disqualification and to pay a fine equal to the amount malversed, which is P183,360.00.

On appeal, the Sandiganbayan, by Decision dated July 4, 2001,[6] affirmed the conviction of petitioner. It found, however, that the amount totally remitted was P150,547.82, not P150,000.00 as found by the trial court, hence, it held petitioner to be liable for the unremitted balance of P182,812.18.

The Sandiganbayan accordingly modified the penalty as follows:

x x x imprisonment of 10 years and 1 day of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum, to suffer the penalty of perpetual special disqualification and pay the government P182,812.18, the amount malversed, as well as a fine equal to the said amount malversed by the accused.

In the present petition for review, petitioner faults the Sandiganbayan to have erred:

- . . . IN NOT UPHOLDING THE CONSTITUTIONAL RIGHT OF THE ACCUSED OF DUE PROCESS BY NOT ALLOWING A RE-EXAMINATION AND A RE-AUDIT OF THE ALLEGED SHORTAGE IN THE AMOUNT OF P333,360.00.

- . . . IN NOT DECLARING THAT THE EXAMINATION AND AUDIT REPORT PREPARED AND CONDUCTED BY THE EXAMINING AUDITOR IS CONTRARY TO LAW.

- . . . IN CONVICTING THE ACCUSED BY HOLDING THE ACCUSED LIABLE FOR THE UNREMITTED COLLECTIONS OF ANOTHER ACCOUNTABLE OFFICER DESIGNATED BY THE SUPERIOR OF THE ACCUSED.[7]

Claiming that her right to due process was violated by the denial of her plea for the conduct of a re-audit of her accountabilities, petitioner cites *Tinga v. People*[8] wherein this Court observed:

By that denial of the re-audit, petitioner was, as claimed by him, not given the right to be fully heard before the charge was filed against him at a time when records were still available and past transactions still fresh in the memory of all concerned. He was given the chance to defend himself before the Sandiganbayan, yes, but as said Court itself observed "Tinga continued to pursue his quest for a re-audit in his honest belief that he had not malversed any government funds. In the process, many but not all disbursement vouchers were located in the office of the Municipal treasurer of Bogo, Cebu, x x x." Perhaps, if he had been re-audited and his accountability reviewed, a different result may have been produced.[9] (Underscoring supplied)

The above-quoted observation of this Court in *Tinga* came about after considering that

[t]he many errors subsequently discovered in the audit examination, even by the Sandiganbayan, raise the strong probability that had the re-audit/review he had requested been accorded him, the remaining balance

could have been satisfactorily accounted for.[10]

In the later case of *Quibal v. Sandiganbayan*[11] in which the therein petitioners cited Tinga in arguing that the Sandiganbayan violated their right to due process when it disallowed a re-examination and re-audit of their accountabilities, this Court held:

x x x Petitioners' reliance on the Tinga case is misplaced. In said case, we ruled that Tinga was denied due process when the Commission on Audit refused to conduct a re-evaluation of the accountabilities of Tinga. The ruling was based on the Court's finding that COA's evaluation of Tinga's accountabilities was replete with errors x x x[12] (Underscoring supplied)

The burden of proof that the subject audit reports contain errors sufficient to merit a re-audit lies with petitioner. What degree of error suffices, there is no hard and fast rule. While COA Memorandum 87-511 dated October 20, 1987[13] (which, as reflected in the above-quoted Deputy Ombudsman's Order of July 28, 1997,[14] was cited by COA Director Alquizalas when he opposed petitioner's Motion for Reconsideration and/or Reinvestigation before the Ombudsman) recognizes that a re-audit may be conducted in certain instances, it does not specify or cite what those instances are. The pertinent portion of the said Memorandum[15] is reproduced hereunder:

x x x

It has been observed that some officials of this Commission have been authorizing the re-audit of the cash and accounts of accountable officers who were earlier found short in their cash accountabilities. Although the conduct thereof may be justified in certain instances on meritorious grounds, such practice has to be controlled by this Commission in order to protect the interest of the government.

It is stressed that the audit, conducted on the cash and accounts of accountable officers in the government is presumed to be complete, thorough and based on documentary evidence and established auditing and accounting procedures and is done to determine the correctness of the cash accountabilities of an accountable officer at a particular time. Any accountable officer or interested person who disputes the propriety of a cash examination or the accuracy of the result thereof may just have to ventilate the issues raised by him to the proper body or tribunal where the case is filed and treat the documents in support thereof as evidence for his defense.

In the interest of justice and in order not to delay the prosecution of cases filed with the Tanodbayan, any request for a re-audit/re-examination of the cash and accounts of accountable officers who were earlier found short in their cash accountabilities should be submitted to the COA Chairman for approval, except when the Order, not merely request, comes from the Sandiganbayan. x x x (Underscoring supplied)

In the absence of specific guidelines then the question of whether re-audit is warranted must be determined in each case on the basis of equity. In *Tinga*, petitioner's plea for a re-audit was, it bears repeating, clearly meritorious in view of the finding that the audit involved therein was replete with errors.

While petitioner alleges that there was a discrepancy in the audit as the reported collections, specifically for the period of February 12-16, 1996, were P310.00 less than the actual collections reflected in the receipts,[16] said discrepancy, if true, is too minimal, as correctly observed by the Sandiganbayan, to merit a re-audit considering the amount of shortage incurred.

Petitioner draws attention to the conflicting findings of the COA, the trial court, and the Sandiganbayan regarding her total liability as indication that a re-audit was called for. As against the amount of P333,360.00 demanded by the COA, the trial court found her total liability to be P183,360.00 and the Sandiganbayan found it to be P182,812.18. These inconsistent findings were not due to any error in the audits, however. The liability of petitioner as found by the trial court and the Sandiganbayan was lower than that found by the COA because there

were remittances made while the case was already pending which were deducted from petitioner's accountability. On the other hand, the inconsistency between the findings of the trial court and the Sandiganbayan was due to their different computations as to the actual amount of remittances, not due to any error in the audits.

Parenthetically, the existence of any discrepancy of a mathematical nature is belied by petitioner's own assertions. On direct examination, she testified as follows:

ATTY. TORIBIO

Q

Now, how much is the total financial or monetary accountabilities of Mrs. Bas adding the unremitted collections and the vales?

A

The total amount is P243,599.00.

Q

Now, did Mrs. Bas subsequently make any remittance or partial restitution of her financial accountabilities?

A

After the filing of this case, she made a total deposit of P60,787.00.

Q

Where is your proof of that?

A

The remittance advices are in the office.

Q

What about you, did you make any remittance to the government?

A

Yes, sir.

Q

In what amount?

A

The total amount is P89,761.00.

Q

Do you have still any financial or monetary obligation to the government?

A

No, sir.

Q

After you have remitted this amount of P89,761.00? A No, sir. Q So what was the amount left which was unremitted and you now say it is the financial obligation of Mrs. Bas?

A

It is P182,812.00.[17] (Emphasis and underscoring supplied)

Thus, by petitioner's own reckoning, her liability before any remittances were made was P89,761.00 and that of Bas was P243,599.00. Notably, the total of these amounts, which is P333,360.00, is the same amount of shortage, as computed by the auditor and reflected in the information.

Petitioner additionally alleges that another error of a different nature was committed. She claims that the auditor failed to distinguish her liability and that of Bas, which is contrary to law. She thus argues that Bas should have been charged for the funds actually collected by her everytime she acted as collecting officer in her stead, as well as for the amounts which she (Bas) received as "vales" from her.

That the auditor charged to petitioner's account the unremitted amounts actually collected by Bas is not denied by the auditor, she reasoning that only petitioner was the officially designated Collecting Officer. Thus the auditor declared:

ATTY. TORIBIO

x x x

Q:

What I am asking you is whether you actually know that some other person like Bas was designated as collecting officer?

A:

I have no concerned (sic) about that especially if there is no designation of other collecting officer.

Q:

But you know from the receipts that Bas was also collecting for the bureau because you are familiar with her signature?

A:

Yes, sir.

Q:

So you admitted now that you know that Bas was acting collecting officer?

A:

She was collecting but she is not properly designated. How can I account that collection to her when she is not recognize (sic) as accountable officer.

Q:

Did you send a memo to that effect to the regional director advising him to put an end to that practice?

A:

I talked to the regional director but he said there is lack of personnel.

COURT:

Q:

Was your advise to Atty. Villarin in writing or memorandum?

A:

I told him verbally.

Q:

Why did you not reduce it into writing?

A:

I [f]ound it very repetitive in my part because I already made it official in my audit report. ATTY. TORIBIO

Q:

You have established the fact that even if you discovered shortages committed by the acting officer, you did not find that acting officer responsible?

A:

No, sir. That is why I did not file also a case against the accused. I only made proper report.[18] (Emphasis and underscoring supplied)

Petitioner claims, however, that Bas was officially designated in writing as collection officer on the following dates when she was on maternity leave: (1) October to December 1990, (2) February to March 1992, and (3) July 19 to September, 1995; and that Bas was verbally designated on certain occasions by the Regional Director as shown in his July 14, 1997 Certification reading:

This is to certify that during the period February 12-13; 15 and 16, 1996, I have officially authorized/designated Mrs. DELZA BAS, Clerk III, to act temporarily as Collecting Officer of this office, in lieu of PAMELA A. CHAN, Accounting Clerk II & Collecting Officer-designate, who was then on leave of absence. x x x[19] (Underscoring supplied)

Granted that Bas was given official designation during all the times that she acted as collection officer, petitioner's

liability is not, by that fact alone, mitigated. Petitioner could still be held liable for the amount unremitted by Bas if it can be shown that the latter was under her supervision. As held in *Office of the Court Administrator v. Soriano*:^[20]

x x x Amando Soriano was the Officer-in-Charge and Accountable Officer of the defunct Court of First Instance, Iriga City, Branch XXXIV and as such, he was responsible for all the collections made by the court. Any loss or shortage resulting from non-remittance, unlawful deposit or misapplication thereof, whether he has a hand or not, shall be for his account. It is not an excuse that his designated collection clerk was the one who failed to remit the questioned amount on time because it is incumbent upon him to exercise the strictest supervision on the person he designated, otherwise, he would suffer the consequences of the acts of his designated employee through negligence. In short, by failing to exercise strict supervision on respondent Mila Tijam, he could be liable for malversation through negligence.^[21] (Underscoring supplied)

While, in the immediately cited case, it was the accountable officer himself who made the designation, unlike in the present case, command responsibility should apply in every case where the accountable officer has, in fact, the duty to supervise the designated person. That petitioner had the duty to supervise Bas, she herself so testified:

COURT:

x x x

Q

Was there a procedure that after your leave when you returned to work you have to go over the collection of Bas?

A

Yes, sir.

Q

So that is the procedure?

A

Yes, sir.

Q

After that you have to report to the Regional Director that this is the amount collected by Mrs. Bas when you were absent?

A

No, I don't report that to the Director.

Q

So, you will not make any written accounting of the amount collected by Bas during your absence?

A

I do it for my ownself. I confer with Bas.

Q

Why are you doing that?

A

I have to check if she has remitted the amount collected.

Q

You are doing that because it was your duty to check the collection of Bas?

A

Yes, sir.

Q

In short, you were checking the amount collected by Mrs. Bas because you were the one designated as Acting Cashier?

A

Yes, sir.

Q

Not Bas?

A

Yes, sir.

Q

When Bas acted as cashier or collection officer in your absence, she was under you insofar as Acting Cashier is concerned?

A

Yes, sir.[22] (Emphasis supplied)

The auditor thus committed no error when she charged to petitioner's account the shortage in the collections actually done by Bas.

Petitioner, nonetheless, could have shown that she was not remiss in her supervision of Bas, by way of rebutting the disputable presumption in Article 217 of the Revised Penal Code which states:

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such

missing funds or property to personal use.

Petitioner, however, failed to do so. Not only did she omit to report the shortages of Bas to the proper authority upon her discovery thereof; she even practically admitted to having assisted Bas in covering up such shortages. Thus she declared:

ATTY. URSAL

Q-

Now I want to show to you these remittances for collections on November 7 and 9, 1995, and for collection on November 15, 1995 which corresponds (sic) to P15,355 and P15,465.00. I want you to take a look on these remittances and tell me whether, and tell this Honorable Court whether this Miss Bas did actually remitted (sic) the collections that she made during those dates, that is remittance Advise 9607 and 9608?

A-

Yes, she made these remittances but she borrowed my collections for that day when she deposited this.

COURT:

Q-

What do you mean by she borrowed?

A-

My collection sir, she borrowed it from me for her to be able to depose (sic) for these dates.

COURT:

Q-

In other words, she could not deposit her previous collection?

A-

No, she did not.

COURT:

Q-

So, that's why it would appear that what she was depositing was your money collection she borrowed the money from you?

A-

Yes, she only deposited this by January, 1996.

COURT:

Q-

And you allowed that?

A-

Yes, I allowed this because she promised to pay me the following day but she did not comply with her promise.[23] (Emphasis and underscoring supplied)

Petitioner was thus not merely lax in supervising Bas; she actively assisted her in concealing her shortages to the extent of lending her public funds for that purpose. Significantly, petitioner acknowledged the illegality of her own act.

ATTY. URSAL:

x x x

Q-

Now, may we know if you have that authority for you to lend this money to [Bas]?

A-

No, I don't have that authority but although it is not legal anyway, but then it has been the usual practice at the office for some of the employees to borrow and to return them immediately but in the case of Miss Bas she did not comply with her promise.

COURT:

Q-

So, who told you it is not illegal?

A-

I know it is not proper.

COURT:

Q-

Who told you it is not illegal?

A-

It's not legal sir, I said, it's not legal.

COURT:

Proceed.

ATTY. URSAL:

Q-

So, are you aware of the extent of your responsibility as cashier that your prime duty is to safeguard the funds of the agency and that any shortage of these funds is your accountability?

A-

Yes, sir. I do not think of anything because I trusted my co-employee that she will not let me down and then she will not put me in trouble.[24] (Emphasis and underscoring supplied)

To make matters worse, petitioner did not only lend Bas those amounts given on November 7, 9, and 15, 1995. She admittedly extended "vales" to her in the amount of P112,089.18, and to others, also out of public funds.

ATTY. URSAL:

Q-

Now, you said earlier that the amount of P112,118.00 something like that, was exactly made by Miss Bas as vales, what do you mean by vales?

A-

Vale, she will make IOU's.

Q-

So in effect, you have extended some sort of credit or loan to Miss Bas out of the fund of your collection?

A-

Yes, because at that time the one who will borrow will return except Miss Bas.

COURT:

Q-

Did you charge interest?

A-

No, sir.

COURT:

Q-

Are you telling the court that it is the practice of your office?

A-

Yes, sir.

COURT:

Q-

And is it with the knowledge of the director?

A-

Sometimes the director himself will borrow and he will return immediately.

COURT:

Q-

You mean, the director will borrow your collections?

A-

Yes, but he will return immediately.

COURT:

Q-

Are you sure of that?

A-

Yes, sir. [25] (Emphasis and underscoring supplied)

The granting of "vales" had been held in *Meneses v. Sandiganbayan*[26] to be contrary to law, however:

The grant of loans through the "vale" system is a clear case of an accountable officer consenting to the improper or unauthorized use of public funds by other persons, which is punishable by the law. To tolerate such practice is to give a license to every disbursing officer to conduct a lending operation with the use of public funds. There is no law or regulation allowing accountable officers to extend loans to anyone against "vales" or chits given in exchange by the borrowers. On the other hand, the General Auditing Office (now the Commission on Audit) time and again, through repeated office memoranda and rulings had warned against the acceptance of "vales" or chits by any disbursing officer because such transactions are really forms of loans (Memorandum Circular No. 570, June 24, 1968, General Auditing Office).[27] (Underscoring supplied)

The alleged acquiescence of petitioner's superior, even if true, is not a valid defense. As *Ilogon v. Sandiganbayan*[28] teaches:

The fact that petitioner did not personally use the missing funds is not a valid defense and will not exculpate him from his criminal liability. And as aptly found by respondent Sandiganbayan, "the fact that (the) immediate superiors of the accused (petitioner herein) have acquiesced to the practice of giving out cash advances for convenience did not legalize the disbursements".[29] (Underscoring supplied)

WHEREFORE, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo at 53-54. [2] Information dated February 18, 1997, vide Rollo at 63-64.

[3] Rollo at 61-62. [4] TSN, June 29, 1998 at 52.

[5] Rollo at 63-70.

[6] Rollo at 30-45. [7] Id. at 17.

[8] 160 SCRA 483 (1988).

[9] Id. at 489.

[10] Id. at 491.

[11] 244 SCRA 224, 233 (1995). [12] Ibid.

[13] Sandiganbayan Rollo at 153.

[14] Supra, note 1.

[15] Supra. [16] Rollo at 20. [17] TSN, June 29, 1998 at 51-52.

[18] TSN, March 25, 1998 at 61-62.

[19] Rollo at 152. [20] 136 SCRA 461 (1985).

[21] Id. at 464.

[22] TSN, June 29, 1998 at 45-46.

[23] TSN, December 16, 1998 at 100.

[24] Id. at 103-104.

[25] Id. at 104-105.

[26] 232 SCRA 441 (1994).

[27] Id. at 446.

[28] 218 SCRA 766 (1993). [29] Id. at 771.

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