

TEODORO M. HERNANDEZ, PETITIONER, VS. THE HONORABLE CHAIRMAN, COMMISSION ON AUDIT, RESPONDENT.*G.R. No. 71871. November 06, 1989*

Ponente: CRUZ, J.

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It was one of those prosaic decisions not requiring deep thought or long deliberation. The petitioner arrived at it almost as a matter of course, applying what he believed then to be common sense. Little did he realize until later that it would cause him much anguish, even endanger his life, and ultimately lead to this litigation. But such are the quirks of fate.

At the time of the incident in question, Teodoro M . Hernandez was the officer-in-charge and special disbursing officer of the Ternate Beach Project of the Philippine Tourism Authority in Cavite. As such, he went to the main office of the Authority in Manila on July 1, 1983, to encash two checks covering the wages of the employees and the operating expenses of the Project. He estimated that the money would be available by ten o'clock in the morning and that he would be back in Ternate by about two o'clock in the afternoon of the same day. For some reason, however, the processing of the checks was delayed and was completed only at three o'clock that afternoon. The petitioner decided nevertheless to encash them because the Project employees would be waiting for their pay the following day. He thought he had to do this for their benefit as otherwise they would have to wait until the following Tuesday at the earliest when the main office would reopen. And so, on that afternoon of July 1, 1983, he collected the cash value of the checks and left the main office with not an insubstantial amount of money in his hands.[1]

What would he do with the money in the meantime? The petitioner had two choices, to wit: (1) return to Ternate, Cavite, that same afternoon and arrive there in the early evening; or (2) take the money with him to his house in Marilao, Bulacan, spend the night there, and leave for Ternate the following morning. He opted for the second, thinking it is the safer one. And so, on that afternoon of July 1, 1983, at a little past three o'clock, he took a passenger jeep bound for his house in Bulacan.

It was while the vehicle was along Epifanio de los Santos Avenue that two persons boarded with knives in hand and robbery in mind. One pointed his weapon at the petitioner's side while the other slit his pocket and forcibly took the money he was carrying. The two then jumped out of the jeep and ran. Hernandez, after the initial shock, immediately followed in desperate pursuit. He caught up with Virgilio Alvarez and overcame him after a scuffle. The petitioner sustained injuries in the lip, arms and knees. Alvarez was subsequently charged with robbery and pleaded guilty. But the hold-upper who escaped is still at large and the stolen money he took with him has not been recovered.[2]

On July 5, 1983, the petitioner, invoking the foregoing facts, filed a request for relief from money accountability under Section 638 of the Revised Administrative Code. This was favorably indorsed by the General Manager of the Philippine Tourism Authority the same day[3] and by its Corporate Auditor on July 27, 1983.[4] The Regional

Director, National Capital Region, of the Commission on Audit, made a similar recommendation on January 17, 1984, and also absolved Hernandez of negligence.[5] On June 29, 1984, however, the Commission on Audit, through then Chairman Francisco S. Tantuico, Jr. denied the petitioner's request, observing inter alia:

In the instant case, the loss of the P10,175.00 under the accountability of Mr. Hernandez can be attributed to his negligence because had he brought the cash proceeds of the checks (replenishment fund) to the Beach Park in Ternate, Cavite, immediately after encashment for safekeeping in his office, which is the normal procedure in the handling of public funds, the loss of said cash thru robbery could have been aborted.[6]

In the petition at bar, Hernandez claims that the respondent Commission on Audit acted with grave abuse of discretion in denying him relief and in holding him negligent for the loss of the stolen money. He avers he has done only what any reasonable man would have done and should not be held accountable for a fortuitous event over which he had no control.

The petitioner stresses that he decided to encash the checks in the afternoon of July 1, 1983, which was a Friday, out of concern for the employees of the Project, who were depending on him to make it possible for them to collect their pay the following day. July 2 and 3 being non-working days and July 4 being a holiday, they could receive such payment only on the following Tuesday unless he brought the encashed checks 3 on July 1, 1983, and took it to Ternate the following day.

On his decision to take the money home that afternoon instead of returning directly to Ternate, he says that the first course was more prudent as he saw it, if only because his home in Marilao, Bulacan, was much nearer than his office in Ternate, Cavite. The drive to Ternate would take three hours, including a 30-minute tricycle ride along the dark and lonely Naic-Ternate road; and as he would be starting after three o'clock in the afternoon, it was not likely that he would reach his destination before nightfall. By contrast, the road to Marilao was nearer and safer (or so he reasonably thought) and there was less risk involved in his taking the money the following morning to Ternate rather than on that same afternoon of July 1.

The petitioner maintains that the likelihood of robbery during the time in question was stronger in Ternate than in Marilao, so he should not be blamed if the robbery did occur while he was on the way to Marilao that afternoon. That was a fortuitous event that could not have reasonably been foreseen, especially on that busy highway. At any rate, he contends, he had not been remiss in protecting the money in his custody; in fact, he immediately pursued the hold-uppers and succeeded in catching one of them who was subsequently prosecuted and convicted. It might have been different if he had simply resigned himself to the robbery and allowed the culprits to go scot-free. But he acted. His action after the robbery only goes to show his vigilance over the money entrusted to his custody and his readiness to protect it even at great personal risk.

In his Comment, then Solicitor General Sedfrey A. Ordonez supported the denial of the petitioner's request, arguing that Hernandez was negligent in the safekeeping of the stolen funds as correctly found by the Commission on Audit.[7] Later, however, his successor, Solicitor General Francisco I. Chavez, submitted a Manifestation in Lieu of Memorandum in which he sided with the petitioner, agreeing that Hernandez had not committed any negligence or, assuming he was guilty of contributory negligence, had made up for it with his efforts to retrieve the money and his capture of one of the robbers, who was eventually convicted.[8] This prompted the respondent Commission on Audit to submit its own memorandum.

The Commission on Audit insists in this memorandum that the petitioner should not be relieved from his money accountability because it was his own negligence that led to the loss of the cash he had sought to take not to Ternate in Cavite but to Marilao.

Its contention is that the petitioner should not have encashed the checks on July 1, 1983, as the hour was already late and he knew he could not return to Ternate before nightfall. Knowing this, he should have prudently deferred encashing the checks until the morning of the next working day on July 5, 1983, when he could have safely taken the money to Ternate. His alleged concern for the convenience of his fellow workers was not really a valid reason because one of the checks he had encashed, in the greater amount of P6,964.00, was in fact not for salaries and wages but for the operating expenses of the Project. There was no urgency to encash that check. Moreover, if it is true that he had that much concern for the employees, he should have gone to the main office earlier than July 1, 1983, since the vouchers representing the checks had already been prepared as of June 29, 1983.

The memorandum concludes that in deciding to take the money with him to Marilao after imprudently withdrawing it from the main office, the petitioner was assuming a risk from which he cannot now be excused after the loss of the money as a result of the robbery to which it was unreasonably exposed. In any event, the burden of proof in petitions for relief from money accountability rests with the petitioner, who has not clearly established that the loss of the money was not the result of his negligence.

Section 638 of the Revised Administrative Code reads as follows:

SEC. 638. Credit for loss occurring in transit or due to casualty — Notice to Auditor. — When a loss of government funds or property occurs while the same is in transit or is caused by fire, theft, or other casualty, the officer accountable therefor or having custody thereof shall immediately notify the Auditor General, or the provincial auditor, according as a matter is within the original jurisdiction of the one or the other, and within thirty days or such longer period as the Auditor, or provincial auditor, may in the particular case allow, shall present his application for relief, with the available evidence in support thereof. An officer who fails to comply with this requirement shall not be relieved of liability or allowed credit for any such loss in the settlement of his accounts.

This provision has since then been reiterated, with some slight modification, in Section 73 of P.D. No. 1445, otherwise known as the "Government Auditing Code of the Philippines," which was promulgated on June 11, 1978.

Applying the letter and spirit of the above-mentioned laws, and after considering the established facts in the light of the arguments of the parties, this Court inclines in favor of the petitioner.

Hindsight is a cruel judge. It is so easy to say, after the event, that one should have done this and not that or that he should not have acted at all, or else this problem would not have arisen at all. That is all very well as long as one is examining something that has already taken place. One can hardly be wrong in such a case. But the trouble with this retrospective assessment is that it assumes for everybody an uncanny prescience that will enable him by some mysterious process to avoid the pitfalls and hazards that he is expected to have foreseen. It does not work out that way in real life. For most of us, all we can rely on is a reasoned conjecture of what might happen, based on common sense and our own experiences, or our intuition, if you will, and without any mystic ability to peer into the future. So it was with the petitioner.

It is pointless to argue that Hernandez should have encashed the vouchers earlier because they were dated anyway on June 29, 1983. He was not obliged to encash the checks earlier and then again there might have been any number of reasons why he did so only on July 1, 1983. The point is that he did encash the checks on that date and took the money to Marilao and not Ternate in view of the lateness of the hour. The question before us is whether these acts are so tainted with negligence or recklessness as to justify the denial of the petitioner's request for relief from accountability for the stolen money.

It seems to us that the petitioner was moved only by the best of motives when he encashed the checks on July 1,

1983, so his co-employees in Ternate could collect their salaries and wages the following day. Significantly, although this was a non-working day, he was intending to make the trip to his office the following day for the unselfish purpose of accommodating his

fellow workers. The other alternative was to encash the checks on July 5, 1983, the next working day after July 1, 1983, which would have meant a 5-day wait for the payment of the said salaries and wages. Being a modest employee himself, Hernandez must have realized the great discomfort it would cause the laborers, who were dependent on their wages for their sustenance and were anxious to collect their pay as soon as possible.

For such an attitude, Hernandez should be commended rather than faulted.

As for Hernandez's choice between Marilao, Bulacan, and Ternate, Cavite, one could easily agree that the former was the safer destination, being nearer, and in view of the comparative hazards in the trips to the two places. It is true that the petitioner miscalculated, but the Court feels he should not be blamed for that. The decision he made seemed logical at that time and was one that could be expected of a reasonable and prudent person. And if, as it happened, the two robbers attacked him in broad daylight in the jeep while it was on a busy highway, and in the presence of other passengers, it cannot be said that all this was the result of his imprudence and negligence. This was undoubtedly a fortuitous event covered by the said provisions, something that could not have been reasonably foreseen although it could have happened, and did.

We find, in sum, that under the circumstances as above narrated, the petitioner is entitled to be relieved from accountability for the money forcibly taken from him in the afternoon of July 1, 1983. To impose such liability upon him would be to read the law too sternly when it should be softened by the proven facts.

ACCORDINGLY, the petition is GRANTED, without any pronouncement as to costs.

IT IS SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griho-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Rollo, p. 8.

[2] Ibid., p. 19.

[3] Id., p. 26.

[4] Id., pp. 27-28.

[5] Id., p. 29.

[6] Id., p. 31.

[7] Id., pp. 126-127.

[8] Id., pp. 188-189.

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