

SECOND DIVISION

[G.R. No. 150439, July 29, 2005]

**AMELITA DELA CRUZ, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Decision^[1] of the Court of Appeals dated 31 May 2001, in CA-G.R. CR No. 23302, and its Resolution^[2] dated 29 October 2001, which affirmed *in toto* the Decision^[3] of the Regional Trial Court, Branch 43, Manila, dated 07 April 1999, finding the accused, herein petitioner, guilty of the crime of estafa as defined by Article 315, paragraph 1(b) of the Revised Penal Code, in Criminal Case No. 95-142464.

The information^[4] under which the accused-petitioner was charged reads:

That on or about and during the period comprised from the month of December 1994 to January 1995, inclusive, or thereabouts in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud the Great Mandarin Villa Seafoods Village, Inc., and Hock Wan Restaurant Corporation, in the following manner, to wit: the said accused being then the payroll clerk of said Corporations, existing domestic corporations primarily engaged in the restaurant business, with principal places of business at 798 Ongpin St., Sta. Cruz, Manila, and 489 Nueva St., Binondo, Manila, respectively, and by virtue of her position as such, received from said corporations in trust, during the said period a total sum of P471,166.11 representing the excess amount paid to the employees of said corporations as salaries under the obligation of accounting and turning over the said excess to said corporations, but she did not do so in violation of the trust relationship existing between her and said corporations, which amount, once in her possession, far from complying with her obligation aforesaid, went into hiding and failed and refused, and still fails and refuses to return the same whereby misappropriating, misapplying and converting the said amount to her personal use and benefit to the damage and prejudice of the said corporation represented by their common personnel manager Manuel M. Matammu in the total amount of P471,166.11 Philippine Currency.

The accused-petitioner pleaded not guilty to the crime charged.^[5]

As found by the trial court, the facts of the case are as follows:

The **first witness** presented by the prosecution was the personnel manager of the complaining corporations, **Manuel M. Matammu**, who testified that he is responsible for the hiring of employees, monitoring the rules and regulations, violations in the rules and also, enforcing the president's instruction from time to time; that the Great Mandarin Restaurant has two (2) branches, one in Ongpin, Sta. Cruz, Manila, and the other one in Greenhills, San Juan; the main office is located at Nueva St., Binondo, Manila; that the accused Amelita dela Cruz, whom he identified in open court, was their payroll clerk since 1989; that the accused was a college graduate working previously in an accounting firm as an accounting clerk from where they pirated her and has been with them for about six (6) years until she was first confronted in December of 1994. It was the duty of the accused to compute the payroll based on the time card, request the treasurer for the issuance and encashment of the corresponding checks, placed the money on the pay slip and afterwards distribute the same to the employees. He further testified that the accused stopped working on the second week of January 1995, when she failed to comply with the instruction to submit a report on the computations she made. Considering that the payroll record were no longer in the office, he computed the total of the acknowledged pay slips and compared it with the total amount of the checks withdrawn for that particular period, he found out that there was an overdrawn amount of P352,427.31. He arrived at this amount of P352,427.31 after adding the amounts appearing in the acknowledged pay slips for the period, from December 1-15, 1994; December 16-31, 1994 and January 1-15, 1995 of the three companies, Hock Wan, Mandarin Villa Seafoods, Greenhills and Mandarin, Ongpin ... and deducted the same from the checks for the payroll issued and encashed for the same period. ... Witness also testified that after discovering the discrepancy he immediately reported this to the Administration and submitted a report therein as instructed. He recommended that the proper complaint be filed in court and in turn he was instructed to make further audit. Witness, further elaborated, that ... in the distribution of the pay slips the accused was assisted by the other secretary; that the employees go to the main office to get the pay envelope but, sometimes the payroll was sent to the Lady Captain at Greenhills and there is no possibility of tampering the pay envelope because it was sealed. As far as he knows there was no complaint of any discrepancy or insufficiency for the pay by any employee. He likewise stated that what triggered the audit was the information received by the president about the life style of the accused, she was able to buy a car and built her own house. On cross examination, witness stated that the president of the complaining corporations herein is Mr. Nelson Loa and witness reports at the residence of his boss at No. 918 Lever St., Binondo, Manila, where they have an office. Witness admitted that he has no actual and personal knowledge of all the disbursement at Mandarin Villa Restaurant and in this particular case, that of the payroll moneys from December 1 to 15 and 16 to 31, 1994 and January 1 to 15, 1995 and if ever they were actually received and distributed by the accused to the employees. ... Witness clarified that he knows for a fact that the accused was assigned to compute the payroll and distribute the money to the employees; that the treasurer is the one who withdrew the money based on the computation of accused which was never checked, if

it was correct or not; when the money was turned over to the accused the treasurer does not require receipt of acknowledgment from the accused. No complaint was received of any shortage in the salary, the only complaint, which is very seldom, were regarding the overtime pay which was not paid or there is a wrong computation.

The **second witness is King Eng Kiat** the treasurer of the Great Mandarin Restaurant. He stated that he has been in the company for almost ten (10) years and his duties are to deposit and withdraw money from the bank intended for the payroll; that the accused has been with the company for five (5) or six (6) years as a payroll clerk or pay master; that the salaries are given every fifteenth (15th) and thirtieth (30th) of the month; that the computation was made and given to him by the accused. After withdrawing the money intended for salaries he hands it over to the accused at the Mandarin Villa office without receipt from the accused. He also remembered issuing, withdrawing and giving the following checks to the accused, they are: 1) check dated December 15, 1994 (*should read December 29, 1994*) in the amount of P200,000.00 (*should read P300,000.00*); check dated December 31, 1994 in the amount of P56,540.75 (*should read P476,540.75*); check dated January 12, 1995 in the amount of P500,000.00; check dated January 15, 1995 in the amount of P237,415.00; and check dated December 15, 1994 in the amount of P728,099.50, all these checks were issued for the salaries of the employees of the complaining corporations. The computation of the payroll was contained in a small piece of paper presented to him by the accused which he returned to her together with the money. They have in their computer the computation of the payroll but after the accused went to their office in the later part of December 1994 the diskette was no longer available. He also stated that the accused was audited because, as per information of the president, they came to know about the house and lot and the car acquired by the accused but he has no idea on the amount of salary received by the accused. After the accused was being audited he saw her again, she was then working with the computer and that was the last time he saw her. The accused did not resign from the company she just stopped reporting for work. According to him the audit revealed that there were excesses in the computation of the payroll made by the accused. On cross examination witness admitted that there were no evidence of the salary computation made by the accused as the computation sheet was returned to the accused together with the money. There was also no evidence that the amount of the checks he turned over to the accused were actually given to the employees as their salaries but, there were people inside the office who saw him give said amounts. Besides there are no complaints of underpayment.

The **third witness** for the prosecution was **Teresita Ng de Egano**. She is a clerk at the Finance Division of the Mandarin Seafood Villa Restaurant, in charge of the accounts payable, paying the suppliers and also help in inserting the money in the pay envelope. Aside from this, she check Restaurant receipts and computations. She stated that the accused holds office with her in the same room. According to the witness, the accused is the one who computes the salaries of the

employees, such computation will then be given to Mr. King Eng Kiat. The latter will then withdraw the total amount of the payroll, then afterwards give the encashed amount to the accused. She, together with two other persons, one for Hock Wan and another for Mandarin Villa assist the accused in inserting the money in the pay envelopes. The salaries for the employees of the two (2) corporations were not divided, but the corresponding amount, as indicated in the pay slips, were inserted in the envelope until all the names of the employees indicated in the pay slips were completed. The pay envelopes were then placed in a box. The witness, however, noticed that there were extra money left in the tray and she does not know if these money were returned to Mr. King Eng Kiat. After getting done with this task, the witness then proceeds with her other duty. She also testified that she is present when the salaries were distributed by the accused to the employees. She elaborated that there was no instance that she participated in the computation of the salaries of the employees. According to her, despite the instruction of Mr. Matammu to the accused that she teach them how to compute the payroll, the accused never did. She stated that there were several instances when employees complain about the salaries they received but these concerns insufficient payments between what has been inserted in the pay envelope and the amount indicated in the pay slip. If there was indeed an insufficiency management pays the difference but there is no rule in counter checking the amount placed in the envelope. This has been the practice in the company for a long time. She stated that there was a record of the computation of the salaries of the employees but the accused and the checks withdrawn by Mr. King Eng Kiat, kept by one of her companions, a certain Juanita, however, she is not aware if the accused kept a record of her own and nobody knows if she keeps a record. Witness saw the accused for the last time on January 27, 1995, the latter stayed in the office until eleven o'clock operating the computer. Witness stated that the accused erased the payroll entries in the computer because Mr. Matammu was able to trace that the entries were already erased from the diskettes; at the office the accused was the only computer literate. Witness further stated that, at that time, the accused was being audited by Mr. Matammu because of the news that has been circulating regarding the misappropriation of money and that she was able to buy a car, a house and lot. She stated that the salary received by the accused was about P5,000.00 plus. The accused never turned over the excess money of the payroll to the treasurer, Mr. King Eng Kiat; it was there at her (accused) table for the whole day but the following day it was no longer there. They leave the office at the same time with the accused. There was no occasion that no money was left in the tray after the corresponding salaries of the employees were inserted in their respective pay envelopes and the denominations that the witness usually saw were P100's, P500's and P50's but these were not in bundles only a few pieces. Despite this witness never called the attention of the treasurer nor her other companions. Witness, however admitted, that she has no personal knowledge if the accused returned this excess amount, she never saw the accused return the same or that the accused kept the said amount for herself. On re-direct examination witness explained that after the accused received the payroll money from the treasurer she placed this in a box. Then proceeded to her seat. In

her seat, the accused sorts out the money and places the same on several trays according to denomination....^[6] [Emphasis supplied.]

The version of the defense as testified to by the accused-petitioner is as follows:

For her defense the accused, as the lone witness, declared that she used to work at the Mandarin Seafood Village, Inc., as a secretary and payroll clerk since 1989; that the charge imputed to her were not true; that the amount given to her by the treasurer was the exact amount for the salary of the employees every 15th and 30th day of the month which she computed beforehand and submits the computation to the treasurer. After the money was given to her she counts the same together with a co-employee by the name of Rosita and together with Teresita, another co-employee, place the money inside the envelopes for distribution to the employees. She likewise testified that this is the system of giving salaries to the employees, inclusive of the period from December 1, 1994 to January 15, 1995 and she is sure that after informing the treasurer, the exact amount was given to her but she does not know the amount actually withdrawn by the treasurer. Witness stated that after January 15, 1995 she stopped reporting for work because, the brother of her husband died. The statement of Teresita Ng de Egano that she (accused) has been regularly seen placing the excess amount in her bag is not true because there was no excess money. After the death of her assistant in 1994 she was solely responsible in the computation of the salaries of the employees which was usually done a day before the 15th and 30th of the month. There is a payroll sheet, the computation of which was made and entered into the computer. The same was then thereafter downloaded to the computer diskettes. According to the witness, it was Mr. King who asked her the amount required for a particular salary period and after informing him, the latter then withdraws the corresponding amount. This amount was then handed to the accused for distribution to the employees. The accused also stated that there were no complaint of short payments nor reports of overpayment, the only complaint was short payments of overtime. Witness however stated that she has no notebook nor other written record of the computation of the payroll except, for the computer printouts in the office. Witness clarified that the reason why she was not able to explain the mistake in the payroll computation to Mr. Matammu was the fact that her brother-in-law died and she was not able to return for work afterwards because she became ill. Despite this she never informed anyone in her office; that even with her educational attainment, she was not aware that she might be charged for not reporting for work for a long period of time; that she never sought medical treatment for her illness as she only rested. When witness changed address from Las Piñas to Bacoor, Cavite, and then to Sapphire Street she never informed nor get in touch with her former employer. Witness admitted that she was the one who was keeping the diskettes in the office but she never gave the same to Mr. Matammu when she went on vacation and even when a case was already filed against her, she never went to Mr. Matammu and explain because she was afraid that something bad might happen to her. When the witness was confronted with the discrepancy between her computation and the actual amount paid to the employees her response was that she could no