

## **THIRD DIVISION**

**[ G. R. NO. 149613, August 09, 2005 ]**

**PAMELA CHAN, PETITIONER, VS. SANDIGANBAYAN,  
RESPONDENT.**

### **D E C I S I O N**

**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<sup>[1]</sup> 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<sup>st</sup> 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.<sup>[2]</sup> (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.<sup>[3]</sup>

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.<sup>[4]</sup>

By Judgment dated June 18, 1999,<sup>[5]</sup> 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,<sup>[6]</sup> 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 prison 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:

1. . . . 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.
2. . . . IN NOT DECLARING THAT THE EXAMINATION AND AUDIT REPORT PREPARED AND CONDUCTED BY THE EXAMINING AUDITOR IS CONTRARY TO LAW.
3. . . . IN CONVICTING THE ACCUSED BY HOLDING THE ACCUSED LIABLE FOR THE UNREMITTED COLLECTIONS OF ANOTHER ACCOUNTABLE OFFICER DESIGNATED BY THE SUPERIOR OF THE ACCUSED.<sup>[7]</sup>

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*<sup>[8]</sup> 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 Bogu, Cebu, x x x." Perhaps, if he had been re-audited and his accountability reviewed, a different result may have been produced.<sup>[9]</sup> (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.<sup>[10]</sup>

In the later case of *Quibal v. Sandiganbayan*<sup>[11]</sup> 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<sup>[12]</sup> (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<sup>[13]</sup> (which, as reflected in the above-quoted Deputy Ombudsman's Order of July 28, 1997,<sup>[14]</sup> 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<sup>[15]</sup> 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,<sup>[16]</sup> said discrepancy, if true, is