

FOURH DIVISION

[CA-G.R. CR NO. 29199, September 14, 2006]

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

D E C I S I O N

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.