

EN BANC

[G.R. No. 217874, December 05, 2017]

OPHELIA HERNAN, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, RESPONDENT.

DECISION

PERALTA, J.:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside the Resolution^[1] dated February 2, 2015 and Decision^[2] dated November 13, 2009 of the Sandiganbayan 2nd Division which affirmed, with modification, the Decision dated June 28, 2002 of the Regional Trial Court (RTC), Branch 7, Baguio City convicting petitioner of the crime of malversation of public funds in Criminal Case No. 15722-R.

The antecedent facts are as follows:

In October 1982, petitioner Ophelia Hernan joined the Department of Transportation and Communication (DOTC), Cordillera Administrative Region (CAR) in Baguio City wherein she served as an accounting clerk. In September 1984, she was promoted to the position of Supervising Fiscal Clerk by virtue of which she was designated as cashier, disbursement and collection officer.^[3] As such, petitioner received cash and other collections from customers and clients for the payment of telegraphic transfers, toll fees, and special message fees. The collections she received were deposited at the bank account of the DOTC at the Land Bank of the Philippines (LBP), Baguio City Branch.^[4]

On December 17, 1996, Maria Imelda Lopez, an auditor of the Commission on Audit (COA), conducted a cash examination of the accounts handled by petitioner as instructed by her superior, Sherelyn Narag. As a result, Lopez came across deposit slips dated September 19, 1996 and November 29, 1996 bearing the amounts of P11,300.00 and P81,348.20, respectively.^[5] Upon close scrutiny, she noticed that said deposit slips did not bear a stamp of receipt by the LBP nor was it machine validated. Suspicious about what she found, she and Narag verified all the reports and other documents turned-over to them by petitioner.^[6] On the basis of said findings, Narag sent a letter to the LBP to confirm the remittances made by petitioner. After adding all the deposits made and upon checking with the teller's blotter, Nadelline Oralio, the resident auditor of LBP, found that no deposits were made by petitioner for the account of DOTC on September 19, 1996 for the amount of P11,300.00 and November 29, 1996 for the amount of P81,340.20.^[7]

Thereafter, the LBP's officer-in-charge, Rebecca R. Sanchez, instructed the bank's teller, Catalina Ngaosi, to conduct their own independent inquiry. It was discovered that on September 19, 1996, the only deposit in favor of the DOTC was that made

by its Ifugao office in the Lagawe branch of the LBP.^[8] This prompted Lopez to write to petitioner informing her that the two (2) aforesaid remittances were not acknowledged by the bank. The auditors then found that petitioner duly accounted for the P81,348.20 remittance but not for the P11,300.00. Dissatisfied with petitioner's explanation as to the whereabouts of the said remittance, Narag reported the matter to the COA Regional Director who, in turn wrote to the LBP for confirmation. The LBP then denied receiving any P11,300.00 deposit on September 19, 1996 from petitioner for the account of the DOTC.^[9] Thus, the COA demanded that she pay the said amount. Petitioner, however, refused. Consequently, the COA filed a complaint for malversation of public funds against petitioner with the Office of the Ombudsman for Luzon which, after due investigation, recommended her indictment for the loss of P11,300.00.^[10] Accordingly, petitioner was charged before the RTC of Baguio City in an Information, the accusatory portion of which reads:

That on or about September 16, 1996, or sometime prior or subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Disbursing Officer of the Department of Transportation and Communications, Baguio City, and as such an accountable officer, entrusted with and responsible for the amount of P11,300.00 which accused received and collected for the DOTC, and intended for deposit under the account of DOTC with the Land Bank of the Philippines-Baguio City, by reason of her position, while in the performance of her official functions, taking advantage of her position, did then and there, wilfully, feloniously, and unlawfully misappropriate or consent, or through abandonment or negligence, permit other persons to take such amount of P11,300.00 to the damage and prejudice of the government.

CONTRARY TO LAW.^[11]

Upon arraignment on July 31, 1998, petitioner pleaded not guilty to the offense charged. Hence, trial on the merits ensued.

To establish its case, the prosecution presented the testimonies of two (2) COA auditors, namely, Maria Lopez and Sherelyn Narag as well as three (3) LBP employees, namely, Rebecca Sanchez, Catalina Ngaosi, and Nadelline Oralio.^[12] In response, the defense presented the lone testimony of petitioner, which can be summarized as follows:

On September 19, 1996, petitioner and her supervisor, Cecilia Paraiso, went to the LBP Baguio branch and personally deposited the exact amount of P11,300.00 with accomplished deposit slips in six (6) copies.^[13] Since there were many clients who came ahead of her, she decided to go with her usual arrangement of leaving the money with the teller and telling her that she would just come back to retrieve the deposit slip. Thus, she handed the money to Teller No. 2, whom she identified as Catalina Ngaosi. Upon her return at around 3 o'clock in the afternoon, she retrieved four (4) copies of the deposit slip from Ngaosi. She noticed that the same had no acknowledgment mark on it. Being contented with the initials of the teller on the deposit slips, she returned to her office and kept them in her vault. It was only during the cash count conducted by auditor Lopez when she found out that the said amount was not remitted to the account of the LBP. When demand was made on her

to return the amount, she requested that she be allowed to pay only after investigation of a complaint of Estafa that she would file with the National Bureau of Investigation against some personnel of the bank, particularly Catalina Ngaosi.^[14] The complaint, however, was eventually dismissed.^[15]

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged in the Information. The dispositive portion of the decision states:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered convicting accused Ophelia Hernan of Malversation and hereby sentences her, after applying the Indeterminate Sentence Law, to suffer imprisonment from 7 years, 4 months, and 1 day of *prision mayor* medium period, as minimum, to 11 years, 6 months and 21 days of *prision mayor* as maximum period to *reclusion temporal* maximum period, as maximum, and to pay a fine of P11,300.00.

Accused Ophelia Hernan is further sentenced to suffer the penalty of perpetual special disqualification.

Likewise, accused Ophelia Hernan is hereby ordered to pay back to the government the amount of P11,300.00 plus legal interest thereon at the rate of 12% per annum to be computed from the date of the filing of the Information up to the time the same is actually paid.

Costs against the accused.

SO ORDERED.^[16]

Erroneously, petitioner appealed to the Court of Appeals (CA), which affirmed her conviction but modified the penalty imposed. Upon motion, however, the CA set aside its decision on the finding that it has no appellate jurisdiction over the case. Instead, it is the Sandiganbayan which has exclusive appellate jurisdiction over petitioner occupying a position lower than Salary Grade 27.^[17] Petitioner's new counsel, Atty. Leticia Gutierrez Hayes-Allen, then appealed the case to the Sandiganbayan. In a Decision dated November 13, 2009, the Sandiganbayan affirmed the RTC's judgment of conviction but modified the penalty imposed, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the appealed decision is hereby AFFIRMED, with the modifications that the indeterminate penalty to be imposed on the accused should be from 6 years and 1 day of *prision mayor* as minimum, to 11 years, 6 months, and 21 days of *prision mayor* as maximum, together with the accessory penalties under Article 42 of the Revised Penal Code, and that interest of only 6% shall be imposed on the amount of P11,300.00 to be restored by the accused.

SO ORDERED.^[18]

Petitioner filed a Motion for Reconsideration dated December 21, 2009 alleging that during the trial before the RTC, her counsel was unable to elicit many facts which would show her innocence. Said counsel principally failed to present certain witnesses and documents that would supposedly acquit her from the crime charged.

The Sandiganbayan, however, denied the motion in a Resolution dated August 31, 2010 on the ground that evidence not formally offered before the court below cannot be considered on appeal.^[19]

On June 26, 2013, the Resolution denying petitioner's Motion for Reconsideration became final and executory and was recorded in the Book of Entries of Judgments.^[20] On July 26, 2013, petitioner's new counsel, Atty. Meshack Macwes, filed an *Urgent Motion to Reopen the Case with Leave of Court and with Prayer to Stay the Execution*.^[21] In a Resolution^[22] dated December 4, 2013, however, the Sandiganbayan denied the motion and directed the execution of the judgment of conviction. It noted the absence of the following requisites for the reopening of a case: (1) the reopening must be before finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty (30) days from the issuance of the order.^[23]

Unfazed, petitioner filed on January 9, 2014 a *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for Stay of Execution of Judgment* praying for a reconsideration of the Sandiganbayan's recent Resolution, that the case be reopened for further reception of evidence, and the recall of the Entry of Judgment dated June 26, 2013.^[24] In a Resolution dated February 2, 2015, the Sandiganbayan denied the petition for lack of merit. According to the said court, the motion is clearly a third motion for reconsideration, which is a prohibited pleading under the Rules of Court. Also, the grounds raised therein were merely a rehash of those raised in the two previous motions. The claims that the accused could not contact her counsel on whom she merely relied on for appropriate remedies to be filed on her behalf, and that she has additional evidence to present, were already thoroughly discussed in the August 31, 2010 and December 4, 2013 Resolutions. Moreover, the cases relied upon by petitioner are not on point.^[25]

On May 14, 2015, petitioner filed the instant petition invoking the following arguments:

I.

THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONCLUDING THAT THE MOTION TO REOPEN WAS FILED OUT OF TIME CONSIDERING THE EXTRAORDINARY AND EXCEPTIONAL CIRCUMSTANCES SURROUNDING THE CASE.

II.

THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE EVIDENCE INTENDED TO BE PRESENTED BY PETITIONER SHOULD HER MOTION FOR REOPENING BE GRANTED, WAS PASSED UPON BY THE TRIAL COURT.

III.

THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN PRONOUNCING THAT THE MOTION TO REOPEN AND THE PETITION FOR RECONSIDERATION FILED BY PETITIONER ARE CONSIDERED AS THE SECOND AND THIRD MOTIONS TO THE DENIAL OF THE DECISION.

Petitioner posits that her counsel, Atty. Hayes-Allen, never received the August 31, 2010 Resolution of the Sandiganbayan denying her Motion for Reconsideration. This is because notice thereof was erroneously sent to said counsel's previous office at Poblacion, La Trinidad, Benguet, despite the fact that it was specifically indicated in the Motion for Reconsideration that the new office is at the Public Attorney's Office of Tayug, Pangasinan, following her counsel's appointment as public attorney. Thus, since her counsel was not properly notified of the subject resolution, the entry of judgment is premature.^[26] In support of her assertion, she cites Our ruling in *People v. Chavez*^[27] wherein We held that an entry of judgment without receipt of the resolution is premature.

Petitioner also claims that during trial, she could not obtain the necessary evidence for her defense due to the fact that the odds were against her. Because of this, she asks the Court to relax the strict application of the rules and consider remanding the case to the lower court for further reception of evidence.^[28] In particular, petitioner seeks the reception of an affidavit of a certain John L. Ziganay, an accountant at the Department of Science and Technology (DOST), who previously worked at the DOTC and COA, as well as two (2) deposit slips. According to petitioner, these pieces of evidence would show that the P11,300.00 deposited at the Lagawe branch of the LBP was actually the deposit made by petitioner and not by a certain Lanie Cabacungan, as the prosecution suggests. This is because the P11,300.00 deposit made by Cabacungan consists of two (2) different amounts, which, if proper accounting procedure is followed, shall be recorded in the bank statement as two (2) separate amounts and not their total sum of P11,300.00.^[29] Thus, the Sandiganbayan's denial of petitioner's motion to reopen the case is capricious, despotic, and whimsical since the admission of her additional evidence will prevent a miscarriage.

Finally, petitioner denies the Sandiganbayan's ruling that her motion to reopen and petition for reconsideration are considered as a second and third motion for reconsideration, and are thus, prohibited pleadings. This is because the additional evidence she seeks to introduce were not available during the trial of her case.

The petition is devoid of merit.

At the outset, the Court notes that as pointed out by respondent Office of the Special Prosecutor, petitioner's resort to a petition for *certiorari* under Rule 65 of the Rules of Court is an improper remedy. In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.^[30] It bears stressing that the extraordinary remedy of *certiorari* can be availed of only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.^[31] If the Order or Resolution sought to be