

THIRD DIVISION

[G.R. No. 163586, January 27, 2009]

**SHARON CASTRO, PETITIONER, VS. HON. MERLIN DELORIA, AS
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 65,
GUIMARAS; THE COA- REGION VI, REPRESENTED BY ITS
DIRECTOR; AND HON. COURT OF APPEALS, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court filed by Sharon Castro (petitioner) to assail the July 22, 2003 Decision^[1] of the Court of Appeals (CA) which dismissed CA-G.R. SP No. 69350; and the March 26, 2004 CA Resolution^[2] which denied the motion for reconsideration.

The facts are of record.

On May 31, 2000, petitioner was charged by the Ombudsman before the Regional Trial Court (RTC), Branch 65, Guimaras, with Malversation of Public Funds, under an Information which reads, as follows:

That on or about the 17th day of August 1998, and for sometime prior thereto, in the Municipality of Buenavista, Province of Guimaras, Philippines and within the jurisdiction of the this Honorable Court, abovenamed accused, a public officer, being the Revenue Officer I of the Bureau of Internal Revenue, Buenavista, Guimaras and as such, was in the custody and possession of public funds in the amount of P556,681.53, Philippine Currency, representing the value of her collections and other accountabilities, for which she is accountable by reason of the duties of her office, in such capacity and committing the offense in relation to office, taking advantage of her public position, 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 said amount of P556,681.53, and despite notice and demands made upon her account for said public funds, she has failed to do so, to the damage and prejudice of the government.

CONTRARY TO LAW.^[3]

Petitioner pleaded NOT GUILTY when arraigned on February 16, 2001.

On August 31, 2001, petitioner filed a Motion to Quash on the grounds of lack of jurisdiction and lack of authority of the Ombudsman to conduct the preliminary investigation and file the Information. Petitioner argued that the Information failed

to allege her salary grade — a material fact upon which depends the jurisdiction of the RTC. Citing *Uy v. Sandiganbayan*,^[4] petitioner further argued that as she was a public employee with salary grade 27, the case filed against her was cognizable by the RTC and may be investigated and prosecuted only by the public prosecutor, and not by the Ombudsman whose prosecutorial power was limited to cases cognizable by the *Sandiganbayan*.^[5]

The RTC denied the Motion to Quash in an Order^[6] dated September 7, 2001. It held that the jurisdiction of the RTC over the case did not depend on the salary grade of petitioner, but on the penalty imposable upon the latter for the offense charged.^[7] Moreover, it sustained the prosecutorial authority of the Ombudsman in the case, pointing out that in *Uy*, upon motion for clarification filed by the Ombudsman, the Court set aside its August 9, 1999 Decision and issued a March 20, 2001 Resolution expressly recognizing the prosecutorial and investigatory authority of the Ombudsman in cases cognizable by the RTC.

The RTC further held that the Motion to Quash was contrary to Sec. 1, Rule 117, for it was filed after petitioner pleaded not guilty under the Information.^[8]

Petitioner filed a Motion for Reconsideration,^[9] which the RTC denied in its December 18, 2001 Order.^[10]

Petitioner filed a petition for *certiorari*^[11] with the CA, but the latter dismissed the petition in the Decision under review.

Petitioner's motion for reconsideration^[12] was also denied.

Hence, the present petition, confining the issues to the following:

1. Whether or not the Ombudsman, as of May 31, 2000, when the Information for Malversation of Public Funds was instituted against the Petitioner, had the authority to file the same in light of this Supreme Court's ruling in the First "*Uy vs. Sandiganbayan*" case, which declared that the prosecutorial powers of the Ombudsman is limited to cases cognizable by the *Sandiganbayan*.
2. Whether or not the clarificatory Resolution issued by the Supreme Court dated February 22, 2001 in the *Uy vs. Sandiganbayan* case can be made applicable to the Petitioner-Accused, without violating the constitutional provision on ex-post facto laws and denial of the accused to due process.^[13]

Petitioner contends that from the time of the promulgation on August 9, 1999 of the Decision of the Court in *Uy* up to the time of issuance on March 20, 2001 of the Resolution of the Court in the same case, the prevailing jurisprudence was that the Ombudsman had no prosecutorial powers over cases cognizable by the RTC. As the investigation and prosecution against petitioner was conducted by the Ombudsman beginning April 26, 2000, then the August 9, 1999 Decision in *Uy* was applicable, notwithstanding that the said decision was set aside in the March 20, 2001 Resolution of the Court in said case. Hence, the Information that was filed against

petitioner was void for at that time the Ombudsman had no investigatory and prosecutorial powers over the case.

The petition lacks merit.

The petition calls to mind *Office of the Ombudsman v. Enoc*,^[14] wherein accused Ruben Enoc, et al. invoked the August 9, 1999 Decision of the Court in *Uy*^[15] in a motion to dismiss the 11 counts of malversation that were filed against them by the Ombudsman before the RTC. The RTC granted the motion but upon petition filed by the Ombudsman, the Court reversed the RTC and held:

In turn, petitioner filed a Manifestation invoking the very same resolution promulgated on March 20, 2001 in *Uy v. Sandiganbayan* reconsidering the ruling that the prosecutory power of the Ombudsman extended only to cases cognizable by the Sandiganbayan.

Indeed, this Court has reconsidered the said ruling and held that the Ombudsman has powers to prosecute not only graft cases within the jurisdiction of the Sandiganbayan but also those cognizable by the regular courts. It held:

The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. The law does not make a distinction between cases cognizable by the Sandiganbayan and those cognizable by regular courts. It has been held that the clause "any illegal act or omission of any public official" is broad enough to embrace any crime committed by a public officer or employee.

The reference made by RA 6770 to cases cognizable by the Sandiganbayan, particularly in Section 15(1) giving the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan, and Section 11(4) granting the Special Prosecutor the power to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan, should not be construed as confining the scope of the investigatory and prosecutory power of the Ombudsman to such cases.

Section 15 of RA 6770 gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan. The law defines such primary jurisdiction as authorizing the Ombudsman "to take over, at any stage, from any investigatory agency of the government, the investigation of such cases." The grant of this authority does not necessarily imply the exclusion from its jurisdiction of cases involving public officers and employees cognizable by other courts. The exercise by the Ombudsman of his primary jurisdiction over cases cognizable by the Sandiganbayan is not incompatible with the discharge of his duty to investigate and prosecute