

## EN BANC

[ G.R. No. 143403, January 22, 2003 ]

**FILONILA O. CRUZ, PETITIONER, VS. HON. CELSO D. GANGAN,  
DIR. MARCELINO HANOPOL, AUDITOR GLENDA MANLAPAZ, AND  
THE COMMISSION ON AUDIT, RESPONDENTS.**

### DECISION

#### **PANGANIBAN, J.:**

While we commend the Commission on Audit for its diligence in safeguarding State properties, we nonetheless rule that a government employee who has not been proven to be culpable or negligent should not be held accountable for the loss of a cellular phone stolen from her while she was riding the Light Railway Transit (LRT). On the other hand, the dogged persistence of petitioner in fighting for her rights, honor, respect and dignity has not been lost on this Court. She has been true to her calling as an educator and a role model for our young people.

#### The Case

For review on certiorari under Rule 64 is Decision No. 2000-104<sup>[1]</sup> dated March 28, 2000, issued by the Commission on Audit (COA), requiring Dr. Filonila O. Cruz to pay the book value of a lost government-issued Nokia 909 analog cellular phone. The decretal portion of the Decision reads as follows:

“Premises considered, and conformably to the adverse recommendations of the Director, NGAO II and the Auditor, TESDA-NCR in the letter and 2nd Indorsement dated July 13, 1999 and February 26, 1999, respectively, it is regretted that the instant request for relief is DENIED for want of merit. This being so, the herein petitioner should be required to pay the book value of the lost government-issued cellular phone.”<sup>[2]</sup>

#### The Facts

On Friday afternoon of January 15, 1999, petitioner went to the Regional Office of the Technological Education and Skills Development Authority (TESDA) in Taguig, Metro Manila for consultation with the regional director.<sup>[3]</sup> After the meeting, petitioner went back to her official station in Caloocan City, where she was the then Camanava district director of the TESDA, by boarding the Light Railway Transit (LRT) from Sen. Gil Puyat Avenue to Monumento. On board the LRT, her handbag was slashed and its contents stolen by an unidentified person. Among the items taken from her were her wallet and the government-issued cellular phone, which is the subject of the instant case. That same day, she reported the incident to police authorities who immediately conducted an investigation. However, all efforts to locate the thief and to recover the phone proved futile.

Three days after, on January 18, 1999, petitioner reported the theft to the regional director of TESDA-NCR. She did so through a Memorandum, in which she requested relief from accountability of the subject property. In a 1st Indorsement dated January 19, 1999, the regional director, in turn, indorsed the request to the resident auditor.

Under a 2<sup>nd</sup> Indorsement dated February 26, 1999, the resident auditor<sup>[4]</sup> denied the request of petitioner on the ground that the latter lacked the diligence required in the custody of government properties. Thus, petitioner was ordered to pay the purchase value of the cell phone (P3,988) and that of its case (P250), a total of P4,238. The auditor's action was sustained by the director of the National Government Audit Office II (NGAO II). The matter was then elevated to the Commission on Audit.

### **Ruling of the Commission on Audit**

On appeal, the COA found no sufficient justification to grant the request for relief from accountability. It explained as follows:

"x x x While it may be true that the loss of the cellular phone in question was due to robbery (bag slashing), this however, cannot be made as the basis in granting the herein request for relief from accountability since the accountable officer, Dr. Cruz, failed to exercise that degree of diligence required under the circumstances to prevent/avoid the loss. When Dr. Cruz opted to take the LRT which undeniably, was almost always packed and overcrowded and considering further the day and time she boarded said train which was at about 2:00 to 2:30 P.M. of Friday, she exposed herself to the danger and the possibility of losing things such as the subject cellular phone to pickpockets. As an accountable officer, she was under obligation to exercise proper degree of care and diligence in safeguarding the property, taking into account what a reasonable and prudent man would have done under the circumstances. Dr. Cruz could have reasonably foreseen the danger that would befall her and took precautions against its mischievous result. Therefore, having been remiss in her obligation in the keeping or use of the subject government issued cellular phone, she has to answer for its loss as required under Section 105 of PD 1445. Additionally, to be exempt from liability because of fortuitous event as invoked by petitioner Dr. Cruz has no bearing to the case at bar considering that Article 1174 of the New Civil Code which supports said contention applies only if the actor is free from any negligence or misconduct by which the loss/damage may have been occasioned. Further, in *Nakpil vs. CA*, 144 SCRA 596, one who creates a dangerous condition cannot escape liability although an act of God may have intervened. Thus, there being a positive showing of negligence on the part of the petitioner in the keeping of the subject cellular phone, then, such negligence militates against the grant of herein request for relief."<sup>[5]</sup>

Hence, this Petition.<sup>[6]</sup>

### **Issues**

In her Memorandum, petitioner faults the COA with the following alleged errors:

I.

“The Commission Proper committed grave abuse of discretion amounting to excess of jurisdiction in finding that petitioner failed to exercise that degree of diligence required to prevent the loss of the government-issued cellular phone when she opted to take the light railway transit (LRT) in going to her official station in CAMANAVA District, Caloocan City Hall, Caloocan City[; and]

II.

“The Commission Proper committed grave abuse of discretion when it applied the case of *Nakpil vs. CA*, 144 SCRA 596 and disregarded Article 1174 of the New Civil Code in denying petitioner’s request for relief from accountability[.]”<sup>[7]</sup>

In the main, the issues in this case are: (1) whether petitioner was negligent in the care of the government-issued cellular phone, and (2) whether she should be held accountable for its loss.

We note that in its Manifestation and Motion dated October 24, 2000, reiterated in a similar pleading dated March 28, 2001, the Office of the Solicitor General (OSG) sided with petitioner and prayed for the granting of the Petition. Hence, the COA was herein represented by its general counsel, Atty. Santos M. Alquisalás.

### **The Court’s Ruling**

The Petition is meritorious.

#### **First Issue:** **Required Degree of Diligence**

The crucial question to ask is whether petitioner should be deemed negligent when, on that fateful afternoon, she opted to board the LRT where the cellular phone was stolen.

We answer in the negative. Riding the LRT cannot per se be denounced as a negligent act; more so under the circumstances in this case, in which petitioner’s mode of transit was influenced by time and money considerations.

Petitioner boarded the LRT to be able to arrive in Caloocan in time for her 3:00 p.m. meeting. Any prudent or rational person under similar circumstances can reasonably be expected to do the same. Possession of a cellular phone would not and should not hinder one from boarding an LRT coach as petitioner did. After all, whether she took a bus or a jeepney, the risk of theft would have also been present. Because of her relatively low position and pay, she was not expected to have her own vehicle or to ride a taxicab. Neither had the government granted her the use of any vehicle.