

## FIFTH DIVISION

[ CA-G.R. CR NO. 26602, August 15, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
OPHELIA HERNAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**GUARIÑA III, J.:**

In September 1996, Ophelia Hernan, a disbursement officer of the Department of Transportation and Communications in Baguio City was entrusted with the amount of P11,300 for deposit to its account in Land Bank. When it was discovered that the amount was not credited to the office, she was charged with malversation of public funds under Article 217 of the Revised Penal Code. The information contained the allegation that the amount was not deposited in the bank because she either misappropriated the money or through abandonment or negligence permitted others to take it. Either way, the offense is committed.<sup>[1]</sup>

The prosecution marshaled a host of witnesses to establish the paper trail. Two auditors from the Commission on Audit named Sherelyn Narag and Maria Imelda Lopez had been performing regular and routinary audit of the DOTC in Baguio City and came to know the accused Hernan who was in charge of collections and cash at that office.<sup>[2]</sup> Her official designation was as *Collecting and Cashier and Disbursing Officer*.<sup>[3]</sup> In December 1996, Narag instructed Lopez to conduct a cash examination of her accounts.<sup>[4]</sup>

Lopez testified that she started at once to conduct a cash count of Hernan's collections which amounted to P90, 579.<sup>[5]</sup> She turned to the cash book where Hernan recorded her collections and deposits and, examining the entries from June 3, 1996 to December 17, 1996, discovered the fodder for the present case.

There is an entry in the cash book showing the collection of P11,300 under the name *Trust Liability Dep. No. 84* dated September 9, 1996.<sup>[6]</sup> Lopez asked for the deposit slip from Hernan and was shown a slip dated September 19, 1996. She noticed that it was not stamped by the depository bank.<sup>[7]</sup> Her suspicions were aroused. She knew that deposit slips were either stamped by the bank or machine validated.<sup>[8]</sup> She took the step of asking Land Bank about a number of recorded entries and received the assurance that two items were not remitted : *P11,300 covered by the 9-19-96 and P81,348.20 by the 11-29-96 entry*.<sup>[9]</sup> She cross-checked the bank statements and confirmed that the amount of P11,300 was not recorded.<sup>[10]</sup> She prepared a Statement of Accountability as of December 17, 1996 which reflected the amounts of P11,300 and P81,348.20 *as reported deposits subject to further investigation*.<sup>[11]</sup>

She came across a deposit made on the particular day, September 19, 1996, for exactly the same amount, P11,300, by way of a credit advice of Land Bank of a remittance from its Lagawe Branch.<sup>[12]</sup> From an examination of the record, she ascertained that this transaction was not the missing deposit, as it only represented DOTC collections remitted by a Lanie Cabacungan from Ifugao. But she could not explain certain changes in the document - the date September 13 was crossed out and replaced by a 19 and the name of Cabacungan was typewritten on a different machine.<sup>[13]</sup>

Lopez was assisted in the audit by Narag, her supervisor. After the irregularity was discovered, Narag wrote to Hernan on January 27, 1997 advising her that two of her remittances were not acknowledged by the bank.<sup>[14]</sup> Hernan accounted for the remittance of P81,348.20 by transmitting a cash deposit slip signed by the bank teller. The P11,300 remittance proved more problematic. She put her explanation down in writing, saying that she left the money with the bank teller on September 19 together with the cash deposit, since there were many clients ahead of her that day. When she returned, she noticed that the slip did not bear the acknowledgment of the bank which is usually stamped on it. But she did not bother anymore to call the attention of the teller since her signature or initial was affixed to the slip. She surmised that either a verification of the bank statements would confirm the remittance of the amounts or they were wrongly posted.<sup>[15]</sup>

Wary of the explanation, Narag reported the matter to the Regional Director who in turn wrote the Land Bank for confirmation.<sup>[16]</sup> When the deposit was disowned, Narag, upon instruction of her superior, crafted a demand letter to Hernan. It was sent and received on April 8, 1997.<sup>[17]</sup> The auditor's demand sought the repayment of the two collections amounting to P92,648.20. In a reply,<sup>[18]</sup> Hernan requested that she be allowed to pay after the investigation of a complaint that she would file with the NBI against some personnel of the bank.

From Land Bank's side, OIC Rebecca Sanchez, bank teller Catalina Ngaosi and the auditor Nadelline Orallo took the witness stand. Sanchez testified that when she received the letter from COA,<sup>[19]</sup> she instructed Ngaosi, the bank teller, to verify if the amount of P11, 300 was received by them. They retrieved the files consisting of the deposit slips and proof sheet and found out that no amount of the given description was remitted. There was actually a deposit of P11,300 which however, came from their Lagawe Branch through an inter-office memo that did not involve cash.<sup>[20]</sup>

Sanchez saw some significant anomalies in the deposit slips presented to her by Hernan in the company of the auditor Sherelyn Narag. The slip for the P11,300 contained a teller's initial that did not belong to the assigned teller Catalina Ngaosi. She was able to ascertain this by comparing Ngaosi's initial to that appearing in the slip. She was convinced that the initial in the slip was a forgery. She said that without a machine validation, the deposit is not considered as received.<sup>[21]</sup>

Ngaosi, the teller, affirmed that she did not receive any deposit of P11,300 for the account of DOTC on September 19 as shown by the deposit slips for the day and other records of her transactions.<sup>[22]</sup> Aside from the slips, she had treasury

remittances from several government offices but none from DOTC.<sup>[23]</sup> The bank statements for the period also did not contain any entry covering the amount.<sup>[24]</sup> She had inspected the deposit slip Exhibit H and denied having received the amount stated therein. The slip was not stamped nor machine validated and the initial affixed to it was not hers.<sup>[25]</sup>

Orallo was the COA auditor assigned to Land Bank at the time. When she received Narag's query in January 1997,<sup>[26]</sup> she took hold of all the deposit slips from January to December 1996 and verified that the amount covered by the deposit slip presented by Hernan for September 19, 1996 was not received by the bank. Just to make sure that the deposit was not made, she added up all the deposits made on that date and checked the teller's blotter recoding all her transactions. The non-deposit of P11,300 was confirmed. She said that all deposit slips credited by the bank were machine validated, even the copies returned to the depositor.<sup>[27]</sup>

Ophelia Hernan, the accused, does not contest the fact that she is an accountable officer. In addition to being the supervising fiscal clerk, she was assigned the duties of a cashier and a collecting and disbursing officer.<sup>[28]</sup> She also admits that she had in her custody the amount of P11,300 representing her collections which she was under a duty to deposit with Land Bank as their depository bank.<sup>[29]</sup> She insists, though, that she had deposited this amount. She turned it over to the teller Catalina Ngaosi with the proper deposit slip at 1 PM on September 19, 1996. Since there were many depositors ahead of her, she gave the money to the teller and left word that she would return for the deposit slip. Of the six copies she prepared, four were returned to her. She noticed that there was no acknowledgment of receipt marked on them. But she saw the teller's initials. She contented herself with this arrangement aware of occasions when unvalidated deposit slips were nonetheless posted to the account of the office.<sup>[30]</sup>

She attached copies of the slip to her monthly report to the COA and other offices, leaving one for the station file. Her cash book and records of collection and payments were regularly audited. Having found nothing irregular, they had issued in her favor certificates of settlement of balance and clearance.<sup>[31]</sup> She pointed to Ngaosi, the teller, as the person who pocketed the money. She filed a complaint for estafa against her with the NBI, but it did not prosper.<sup>[32]</sup>

Narag, the auditor, and several DOTC employees<sup>[33]</sup> whose signatures are affixed to Hernan's clearance took the witness stand to clarify the papers shown by her. Narag explained that the certificate of settlement of balance is a form used for post-audit activity, but when a deficiency is found in a cash examination, a demand letter is issued. The certificate does not include any finding on the cash examination. <sup>[34]</sup> The DOTC signatories to the clearance said, on the other hand, that they were only attesting to the fact that Hernan had no property and money accountability insofar as their respective offices were concerned.<sup>[35]</sup>

In a decision on June 28, 2002, the trial court found Ophelia Hernan guilty of malversation.<sup>[36]</sup> On the basis of the audit of the COA auditors, the bank records and testimony of the bank teller, it rejected the defense of the accused that she deposited the amount of P11,300 with the bank. The deposit slip, Exhibit H, was

found to be spurious, since it was not machine validated and the initials thereon were disowned by the teller. The court held that from the failure of the accused to account for the public funds in her custody after demand was made, a prima facie presumption of misappropriation already arises against her which she has failed to refute or overcome with her own evidence. Even if it were true that she entrusted the money to the teller and, hence, did not personally misappropriate it, she would purportedly still be liable for malversation – for permitting others through abandonment or negligence to take the money.

The accused was ordered to suffer an indeterminate penalty worded as follows : imprisonment from 7 years 4 months and 1 day of prison mayor medium period, as minimum, to 11 years, 6 months and 21 days of prison mayor maximum to reclusion temporal maximum period, as maximum. She was further sentenced to suffer perpetual special disqualification. She was directed to pay back to the Government the amount of P11,300 plus legal interest at 12% per annum from the date of the filing of the information until paid.

The accused, on appeal, advances the equipoise rule to reclaim an acquittal. It is said that by this doctrine, if the inculpatory facts and circumstances are capable of two or more interpretations, one of which is consistent with innocence and the other with guilt, the evidence does not fulfill the test of moral certainty and the constitutional presumption of innocence stands. She contends that she has satisfactorily counterposed her explanations to the charge that she did not deposit the money by showing the deposit slip signed by the bank teller, and hypothesizes that the amount stated in the slip was either misposted or reflected as the amount deposited by Cabacungan.<sup>[37]</sup> She said that it was too much of a coincidence for two deposits of exactly the same amount to occur on the same banking day.

As statutorily defined, malversation is committed by a public officer or employee who has in his custody public funds or property by virtue of his position and either intentionally or through negligence misappropriates or abstracts it. Article 217 of the Revised Penal Code punishes to the same degree a misappropriation that is done either positively and with personal gain to the public officer or employee or through his abandonment or negligence allows some other person to take such funds or property. In the second type of malversation, criminal intent is not necessary. It is enough that by his negligence, the public officer or employee affords another person the opportunity to convert the funds entrusted to him. In this context, it need not be shown that he had himself derived any benefit from the act. <sup>[38]</sup>

The accused concedes that as a government employee, she came into custody of an amount of P11,300 the public character of which was not in dispute. She agrees that it was her duty to deposit the amount to the account of her office with its depository bank, the Land Bank. The focused defense of the accused, in fact, revolves around the theory that she had complied with this duty. She testified that she went to the bank on September 19, 1996 and turned over the amount to the teller Catalina Ngaosi who, in acknowledgment, delivered to her a deposit slip. The accused touts the slip as the definitive evidence that the money was given to the bank.

The problem is that the bank records do not reflect this particular transaction. The DOTC and Land Bank auditors have confirmed that there is no entry in the books showing a deposit of P11,300 by the accused. They have rejected the deposit slip