



Republic of the Philippines
Supreme Court
 Manila

EN BANC

DR. CONSOLACION S.
 CALLANG,

Petitioner,

G.R. No. 210683

Present:

BERSAMIN, C.J.,*
 CARPIO, *Acting C.J.*,
 PERALTA,
 DEL CASTILLO,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,**
 CAGUIOA,
 REYES, A. JR.,***
 GESMUNDO,
 REYES, J. JR.
 HERNANDO, and
 CARANDANG, JJ.

- versus -

COMMISSION ON AUDIT,
 Respondent.

Promulgated:

January 8, 2019

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DECISION

REYES, J. JR., J.:

Before this Court is a petition for *certiorari* under Rule 64 of the Revised Rules of Court which seeks to reverse and set aside the November 20, 2013 Decision No. 2013-199 of the Commission on Audit (COA).¹

* On official business.

** No part, in view of prior participation as Solicitor General.

*** On leave.

¹ Concurred in by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon; *rollo*, pp. 17-22.

Factual background

On November 17, 2005, petitioner Dr. Consolacion S. Callang (Callang) encashed various checks in the total amount of ₱987,027.50 for the payment of the 2005 Year-End Bonus and Cash Gift of the teaching and non-teaching personnel of Bambang District I, Bayombong, Nueva Vizcaya. She was then a District Supervisor of Bambang District I, Bayombong, Nueva Vizcaya, Department of Education (DepEd).²

After her transaction at the Land Bank of the Philippines, Solano Branch, Callang, together with other principals from Bambang District Schools, had their lunch at a nearby fast-food restaurant. Then, she returned to her office to personally distribute the bonuses to the concerned personnel — only ₱449,573.00 of the total amount was handed out because not all personnel were present. Callang wanted to entrust the remaining cash of ₱537,454.50 to Rizalino Lubong (Lubong), the District Statistician, for safekeeping, but the latter refused, prompting her to bring the money home instead.³

On November 18, 2005, Callang first went to the Saint Mary's University to bring snacks to her granddaughter before heading for her office. While she was on board a jeepney, one of her co-passengers declared a robbery while the vehicle was traversing the National Highway in Macate, Bambang, Nueva Vizcaya. The robber took the bag of money Callang was carrying as well as her personal belongings. The passengers of the robbed jeepney immediately reported the incident to the authorities. In the same vein, Callang notified the Schools Division Superintendent (SDS) volunteering to be submitted for inquiry.

In a letter dated November 18, 2005, the SDS reported the robbery to the Audit Team Leader (ATL), Bambang District I, DepEd, Nueva Vizcaya. Likewise, in a letter dated November 24, 2005, Callang informed the ATL regarding the robbery and asked for assistance to support her request for relief from money accountability.⁴

In his January 17, 2011 Memorandum,⁵ the ATL opined that Callang was not negligent in the loss of funds and her request for Relief of Cash Accountability should be granted. It explained that Callang had no other

² Id. at 17.

³ Id.

⁴ Id. at 19.

⁵ Id. at 120-121.

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choice but to bring home the money she had encashed. The ATL noted that there had been at least four previous burglary incidents in her office and that there was no safety vault in her office but only a wooden cabinet and a steel cabinet. It posited that the loss of money was beyond her control and had exercised sufficient diligence in safeguarding the funds. Meanwhile, in its March 17, 2011 Indorsement⁶ to the COA Adjudication and Settlement Board (COA-ASB), the Supervising Auditor (SA) agreed with the ATL's findings that there was no negligence on the part of Callang for the loss of money as it was caused by the robbery incident.

However, the Officer-in-Charge-Regional Director (OIC-RD) of COA Regional Office No. 2, Tuguegarao City opined that Callang was negligent in handling the funds as an accountable officer. The same was affirmed by the COA-ASB in its September 29, 2011 Decision⁷ finding negligence on the part of Callang and that her request for relief was filed beyond the reglementary period of 30 days reckoned from the occurrence of the loss.

Aggrieved, Callang filed a petition for review before the COA.

Assailed COA Decision

In its November 20, 2013 Decision, the COA affirmed the COA-ASB Decision. Although it found that Callang's request for relief was timely filed, it agreed that her request should be denied on account of her negligence. The COA explained that Callang failed to provide adequate precautionary and safety measures to protect government funds under her custody. It pointed out that she took great risk when she took her lunch at a fast-food restaurant instead of returning immediately to the school. The COA also highlighted that negligence can be attributed to Callang due to the fact that she opted to bring the money home even if there was a safety deposit box in her office. The COA Decision read:

WHEREFORE, there being no new and material evidence presented that would warrant the reversal of the assailed decision, the instant Petition of Dr. Consolacion S. Callang is hereby DENIED for lack of merit. Accordingly, the Adjudication and Settlement Board Decision No. 2011-136 dated September 29, 2011 is hereby AFFIRMED.⁸

⁶ Id. at 122-123.

⁷ Not attached in the *rollo*.

⁸ *Rollo*, pp. 20-21.

Hence, this present petition, raising:

ISSUE

WHETHER OR NOT RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AND GRAVE ERROR IN ISSUING THE DECISION FINDING PETITIONER NEGLIGENT IN THE LOSS OF THE AMOUNT OF ₱537,454.50 THROUGH ROBBERY AND THEREBY DENYING PETITIONER'S RELIEF FROM ACCOUNTABILITY THROUGH THE SAID LOSS.⁹

Callang argued that the COA flip-flopped in handling her request for release from liability considering that the ATL and the SA initially found that she was at no fault for the loss. She also assailed that the findings of the ATL and the SA should have been given more weight than the opinion of the OIC-RD considering that they were more familiar with the situation in the field.

Callang bewailed that the COA nitpicked the facts when it rendered the assailed decision to make it appear that she was indeed negligent. She countered that: it was not a unilateral decision to bring home the money as it was due to the fact that Lubong was apprehensive in having custody over it; the Bambang District Office itself cannot afford to pay for security or a service vehicle to be used by accountable officers; she had lunch at a fast-food restaurant to start distributing the money to other school principals in the area; and the school of her granddaughter was just near her house and it was best to continue with her daily routine in bringing snacks to her as not to arouse suspicion.

In its Comment¹⁰ dated April 8, 2014, the COA countered that Callang failed to allege any grave abuse of discretion considering that the weight and sufficiency of evidence are not assessed in *certiorari* proceedings. It disagreed that it flip-flopped in its Decision because the reversal of the findings of the ATL and the SA is nothing more but the exercise of its quasi-judicial power. In addition, the COA assailed that Callang's petition should be dismissed for its failure to attach the decisions or recommendations relevant in the determination whether it indeed acted with grave abuse of discretion in denying her claim for relief. Likewise, it asserted that it had thoroughly considered all the circumstances before arriving at its decision.

The COA maintained that Callang was negligent when she opted to bring the money home instead of putting it in the safety deposit box in her office. It pointed out that Lubong merely refused to be entrusted with the

⁹ Id. at 5.

¹⁰ Id. at 47-58.

money because he was not used to handle such substantial amount and that there was no mention whether it was risky to place the money inside the safety cabinet. Moreover, the COA noted that Callang failed to prove that her office had been pilfered in the past.

In her Reply¹¹ dated March 9, 2017, Callang explained that while she may have failed to attach the findings of the ATL and the SA, their recommendations that there was no negligence on her part can be found in the COA Decision. In addition, she pointed out that these documents were basically in COA's possession considering that they were prepared by its own personnel.

On the other hand, Callang insisted that she had no choice but to bring the money home because Lubong, who had custody of the safety cabinet, did not want the money to be deposited therein. Further, she explained that it was unsafe to leave the money inside the office because there was only a steel cabinet, not a safety vault, and it had been subject to numerous burglaries in the past.

The Court's Ruling

The petition is meritorious.

Section 5, Rule 64 of the Rules of Court requires that petitions for *certiorari* must be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof, together with certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto. The COA argues that Callang's petition for *certiorari* should have been dismissed outright because it failed to attach the decision or memorandum of the ATL and the SA. It assails that these documents are relevant in the determination whether it had acted with grave abuse of discretion.

In *Magsino v. De Ocampo*,¹² the Court reiterated the guidelines to be observed in deciding whether the rules should be relaxed in cases where the petitioner failed to attach copies of documents relevant to its petition, to wit:

First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.

¹¹ Id. at 110-118.

¹² 741 Phil. 394, 402 (2014), citing *Galvez v. Court of Appeals*, 708 Phil. 9, 20 (2013).

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Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [sic] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

It is beyond cavil that the decision or recommendation of the ATL and the SA are relevant in the determination of whether the COA acted with grave abuse of discretion in denying Callang's request for relief from accountability. Here, Callang ascribes grave abuse of discretion on the part of the COA for disregarding the findings of the ATL and the SA, which were in a better position to be knowledgeable of the present conditions in the field.

In the assailed COA Decision, it stated that the ATL and the SA both opined that Callang was faultless or that she was not negligent in the loss of the funds under her custody. Thus, even without the ATL and the SA's Memoranda, it can be ascertained from the COA Decision attached in Callang's petition that they had recommended for the approval of Callang's request — unfortunately it was reversed by the COA-ASB and affirmed by the COA.

Further, even assuming that indeed the copies of the ATL and SA's Memoranda were indispensable, Callang's failure to initially append them to her petition for *certiorari* is excusable. The findings of the ATL and the SA were subsequently attached in her Reply. In addition, substantial justice dictates that the rules be relaxed in the present case so that the same could be resolved based on the merits.

Negligence depends on the factual circumstances of the case.

Section 105 of Presidential Decree (P.D.) No. 1445 provides that officers accountable for government property or funds shall be liable in case of its loss, damage or deterioration occasioned by negligence in the keeping or use thereof. Absent any showing that the accountable officer acted negligently in the handling of government funds, he or she is not liable for its value and should be relieved from any accountability.¹³ Stated otherwise,

¹³ *Cruz v. Hon. Gangan*, 443 Phil. 856, 865 (2003).

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accountable officers are still liable for the funds under their custody even if the loss was caused by *force majeure* should their own negligence contribute to it.

In *Bintudan v. Commission on Audit*,¹⁴ the Court expounded that negligence is a fluid concept highly dependent on the surrounding circumstances, to wit:

Negligence is the omission to do something that a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and [a] reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances. **Negligence is, therefore, a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require.** Conformably with this understanding of negligence, the diligence the law requires of an individual to observe and exercise varies according to the nature of the situation in which she happens to be, and the importance of the act that she has to perform. (Emphasis supplied)

In ascribing negligence on Callang, the COA noted that she: (1) opted to have her lunch at a fast-food restaurant instead of going back directly to her school; (2) brought home the money in spite of the existence of a safety cabinet in her office; and (3) stopped by her granddaughter's school before going to her office the following day. A careful review of the records, however, would show that there is no substantial evidence to support Callang's alleged negligence.

The Court agrees that Callang was not negligent in deciding to have her lunch at a fast-food restaurant after she had encashed the check instead of immediately returning to her office. It is noteworthy that she was in the fast-food chain not only to have lunch but also to meet the principals from the other school districts so she could start distributing the funds allocated for the Year-End Bonus and Cash Gift of concerned employees in other school districts. Further, the loss did not occur while Callang was at the fast-food restaurant and it was far removed from the robbery incident such that any negligence which may be present during that time cannot be attributed or related to the loss due to the robbery.

In addition, Callang was not negligent when she passed by her granddaughter's school to bring her snacks to her. Her house and her granddaughter's school were in the same neighborhood and were close to each other. Meanwhile, the robbery incident occurred while Callang was commuting from her granddaughter's school to her office. Considering the proximity of the school and her house, her route could not have been

¹⁴ G.R. No. 211937, March 21, 2017, 821 SCRA 211, 221.

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materially different had she decided to go straight to her office. Thus, Callang would have taken the same jeepney trip even if she did not pass by her granddaughter's school.

It readily becomes apparent that the root of the controversy is Callang's decision to bring home the money instead of leaving it in her office. It started the chain of event which eventually led to the point where she was robbed while on her way to work.

The COA finds Callang's choice to bring home the money to be negligent falling below the standard of diligence to be observed on such occasion. Its conclusion that Callang was negligent is primarily due to the fact that she was aware of the presence of a safety deposit box inside the office and still decided to bring the money home.

Nevertheless, a thorough review of the records yields no other conclusion but that Callang exercised sufficient diligence in deciding to bring the money home instead of leaving it in the office. As found by the ATL, Callang's office had been the subject of numerous burglaries in the past. In addition, Lubong did not recommend that the money be placed inside the safety cabinet in the office because of the substantial amount involved.

Based on the circumstances, Callang cannot be faulted when she believed that it was safer to bring the money home where she could always keep a vigilant eye in safekeeping. It can be reasonably seen that she was dissuaded to leave the money in the office because of the past break-ins and the apprehension of his colleague to place a substantial amount of money in the safety cabinet.

The COA maintains that Callang cannot rely on the past burglaries to justify her action because she failed to substantiate the same with sufficient proof. Even assuming that the past incidents of burglaries were not proven, still, she acted diligently in bringing home the money instead of leaving it in the office. In Lubong's Affidavit,¹⁵ he mentioned a "safety cabinet" not a steel or safety vault. Further, an inventory of the office verified that there was no safety vault but only a wooden cabinet and a steel cabinet.¹⁶ In *Gutierrez v. Commission on Audit*,¹⁷ the Court recognized that the safety of money cannot be ensured if it is deposited in enclosures other than a safety vault. Thus, Callang's office had no suitable compartments where the funds could have been safely deposited.

¹⁵ *Rollo*, p. 23.

¹⁶ *Id.* at 120.

¹⁷ 750 Phil. 413, 433 (2015).

Contrary to the COA's position, the present case is similar with the circumstances in *Hernandez v. Chairman, Commission on Audit*¹⁸ in that in both cases, the accountable officer was faced with a dilemma on how to handle government funds — with each option having its own pros and cons. Here, Callang was faced to decide whether to leave the money in the office, aware of the past burglaries, and that the office only had a steel cabinet accessible by anyone, or bring the money home where she could fully monitor the funds.

It is true that had Callang did not bring the money home, government funds would not have been lost on account of the robbery she encountered. Nevertheless, the Court disagrees that she was negligent in bringing the money home because prudence dictated her to keep the money with her at all times instead of leaving the same in the office without adequate protection. In the discerning words of the Court in *Hernandez*, while it is easy to pass judgment with the benefit of foresight, an individual cannot be faulted in failing to predict every outcome of one's action, to wit:

Hindsight is a cruel judge. It is so easy to say, after the event, that one should have done this and not that or that he should not have acted at all, or else this problem would not have arisen at all. That is all very well as long as one is examining something that has already taken place. One can hardly be wrong in such a case. But the trouble with this retrospective assessment is that it assumes for everybody an uncanny prescience that will enable him by some mysterious process to avoid the pitfalls and hazards that he is expected to have foreseen. It does not work out that way in real life. For most of us, all we can rely on is a reasoned conjecture of what might happen, based on common sense and our own experiences, or our intuition, if you will, and without any mystic ability to peer into the future. So it was with the petitioner.¹⁹

To emphasize, Callang's choice of bringing the money home was not fraught with negligence. In fact, it is not hard to fathom that a reasonable and diligent person would have acted the same way as Callang did under the present circumstances. Her office had been subjected to numerous burglaries in the past and it was not equipped with an adequate compartment where the money can be safely stored until the following day.

Taken in isolation, the fact that Callang brought the money home under her custody would appear to be a negligent act rendering her liable for the loss due to the robbery. However, when the surrounding circumstances are considered, Callang acted prudently when she decided against leaving the money in her office and instead bring the funds home. In fact, she would have been negligent had she opted to leave the money in the office knowing that it had no safety vault but only a steel cabinet. In *Leano v. Hon.*

¹⁸ 258-A Phil. 604 (1989).

¹⁹ Id. at 610.

Domingo,²⁰ the Court agreed that a steel cabinet is an inadequate storage for government funds, to wit:

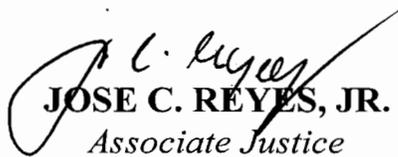
In addition, it was found that the use of the steel cabinet was not a wise and prudent decision. The steel cabinet, even when locked, at times could be pulled open, thus it can be surmised that even without the use of a key, the robbery could be committed once the culprits succeed in entering the room (Progress Report of the Police dated February 28, 1985). Moreover, the original key of the steel cabinet was left inside a small wooden box placed near the steel cabinet; it is therefore highly possible that the said steel cabinet was opened with the use of its original key (Police Alarm Report).

In the present case, Callang had sufficient reason not to leave the money inside the steel cabinet in her office. This is especially true considering that her office had been victimized by burglars in the past. Without a safety vault, a would-be intruder would not find it difficult to force open the steel cabinet and steal the money deposited therein. Consequently, Callang's decision to bring the money home was the reasonable and responsible choice given the situation. The fact that she was robbed on her way to work the following day was beyond her control.

It is unfortunate that the path Callang took to avoid the loss of the money in her hands ultimately led her to it. Nonetheless, she cannot be faulted for not having prescience as all that is expected of her is to exercise the necessary diligence based on existing conditions. Leaving the money in her office would have rendered it more susceptible to loss in light of the situation of her office at the time of the incident. In addition, it is noteworthy that Callang actively pursued the case against the robbers as she initiated the complaint which eventually led to a Resolution²¹ from the Office of the Provincial Prosecutor recommending the filing of an Information against the culprits.

WHEREFORE, the November 20, 2013 Decision No. 2013-199 of the Commission on Audit is **REVERSED** and **SET ASIDE**. The Request for Relief from Money Accountability of petitioner Dr. Consolacion S. Callang is **GRANTED**.

SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

²⁰ 275 Phil. 887, 893 (1991).

²¹ *Rollo*, pp. 36-37.

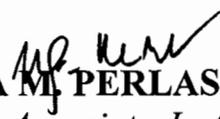
WE CONCUR:

(On Official Business)
LUCAS P. BERSAMIN
Chief Justice


ANTONIO T. CARPIO
Associate Justice

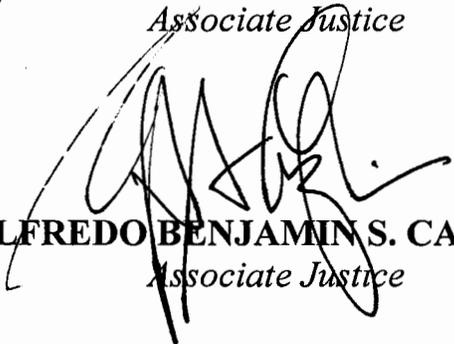

DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

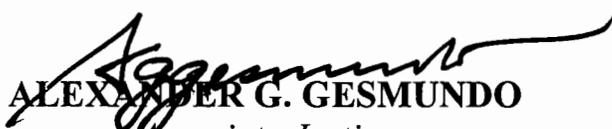

ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V. F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMINS S. CAGUIOA
Associate Justice

(On Leave)
ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

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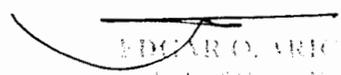
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY



EDUARDO ARCHELA
Clerk of Court En Loco
Supreme Court

