



Republic of the Philippines
Supreme Court
 Manila

EN BANC

ROSEMARIE B. BINTUDAN,
 Petitioner,

G.R. No. 211937

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,
 CAGUIOA,
 MARTIRES, and
 TIJAM, JJ.

- versus -

THE COMMISSION ON AUDIT,
 Respondent.

Promulgated:

March 21, 2017

x-----x

DECISION

BERSAMIN, J.:

An accountable officer who tolerated the posting of the number combination of the safety vault where the funds of the office in her custody were kept is guilty of negligence, and cannot be relieved of her accountability.

The Case

Under challenge is Decision No. 2012-174 issued on October 29, 2012,¹ whereby the Commission on Audit (COA), Commission Proper,

¹ No part.
¹ Rollo, pp. 13-16.

affirmed Decision No. 2009-170 rendered on March 31, 2009 by the COA Legal Services Sector (LSS) denying the petitioner's request for relief from accountability for the loss of cash pertaining to her office amounting to ₱114,907.30 due to robbery.²

Antecedents

The petitioner occupied the position of Disbursing Officer II at the Department of Interior and Local Government-Cordillera Administrative Region (DILG-CAR) Provincial Office in Lagawe, Ifugao at the time material to this case.³

On the night of March 16, 2005, unidentified suspects gained access inside and robbed the DILG-CAR Provincial Office after forcibly destroying the windows and the steel grills. They carted away the contents of the vault amounting to ₱114,907.30. By her letter dated March 17, 2005, the petitioner reported the robbery to the Provincial Office in Lagawe, Ifugao Police as well as to the Audit Team Leader (ATL) of DILG-CAR. On April 6, 2005, she requested the ATL to be relieved from liability over the stolen money.⁴

In its report dated May 5, 2005, the Lagawe Police Station confirmed the robbery and declared that efforts exerted to identify the suspects and recover the stolen funds had remained futile.⁵

In its own investigation and inspection report, the ATL similarly found the robbery to have occurred based on its ascertainment of the following:

a) While the outer door of the brown filing steel cabinet was forcibly opened, the safe/vault was opened with ease by the perpetrators, using the number combination that was posted on the door of the safe/vault;

b) The money inside the vault at the time of the robbery amounted to One Hundred Fourteen Thousand (and) Nine Hundred Seven Pesos and 30/100 (₱114,907.30), representing the salaries and wages of the DILG-Ifugao Provincial Personnel, which is composed of and broken down as follows:

Salaries/wages for March 16 to 31, 2005	₱82,777.49
Salaries/wages for March 1 to 15, 2005	27,527.13

² Id. at 18-21.

³ Id. at 22.

⁴ Id.

⁵ Id. at 14.

Salaries/wages held for February 28, 2005	<u>4,602.68</u>
		114,907.30

c) There was early withdrawal of the salaries and wages for March 16 to 31, 2005 amounting to ₱82,777.49, considering that the distance from the bank to the DILG office is only a few meters away; and

d) The ATL recommends that only ₱32,129.81 shall be granted and ₱82,777.49 be denied because there is no reason to withdraw the salaries for the period March 16-31 on the 11th day of the month, considering that the depository bank is just a few meters away from the DILG Provincial Office.⁶

In LAO-N Decision No. 2007-117 dated October 25, 2007, the Legal and Adjudication Office National (LAO-N) of the COA denied the request for relief of the petitioner because of her negligence.

The petitioner moved for reconsideration on December 14, 2007, stating in her motion, to wit:

a) That she was not the one who posted the number combination of the vault at its door;

b) That the early withdrawal of the salaries of the DILG-Ifugao personnel was not her own idea as she was just implementing what was previously agreed upon by the officers and personnel of the DILG-Ifugao Provincial Office; and

c) That it is the duty of the security personnel to protect the facilities and premises he is guarding regardless of the presence or absence of cash in the premises.⁷

In its Decision No. 2009-170, the COA LSS denied the petitioner's motion for reconsideration by observing that her acts of posting the number combination of the safety vault on its door, the early withdrawal of the funds for the salaries of the employees, and her failure to inform the security office of the large amount of money kept in the vault constituted contributory negligence on her part.⁸

The petitioner's appeal to the COA, Commission Proper, was later on denied. The COA, Commission Proper, also denied her motion for reconsideration.

Hence, the petitioner has filed her petition for review on *certiorari*, raising thereby the sole issue for our consideration that:

⁶ Id. at 38.

⁷ Id. at 14.

⁸ Id. at 20.

RESPONDENT ERRED IN FINDING PETITIONER GUILTY OF NEGLIGENCE, HENCE DENYING HER REQUEST FOR RELIEF FROM ACCOUNTABILITY.⁹

The petitioner maintains that she was not to blame for the loss of the funds during the robbery; that she had not personally posted the number combination of the safety vault on its door; that the practice of posting the number combination had started after the death in 1997 of Disbursing Officer Juan G. Tayaban of the DILG-Ifugao Field Office, when she was then requested to open the vault in the presence of other personnel; that the posting of the number combination relieved the office,¹⁰ and that such posting benefitted the office because it ensured “that regular financial transactions concerning the office may carry on without any interruption” in case of sudden death, amnesia or memory lapse of the disbursing officer.¹¹

Ruling of the Court

The petition for review is denied for lack of merit.

First of all, the petitioner has filed a petition for review on *certiorari* under Rule 45 to assail the decision of the COA *en banc*. Such remedy is improper because her proper remedy is a petition for *certiorari* under Rule 64 of the *Rules of Court*.

We emphasize that an appeal by petition for review on *certiorari* under Rule 45 is available only as a remedy from a decision or final order of a **lower court**. This limitation is imposed by Section 5 of Article VIII of the Constitution, which pertinently provides:

Section 5. The Supreme Court shall have the following powers:

x x x x

2. **Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:**

x x x x

Implementing the limitation is Section 1 of Rule 45, to wit:

⁹ Id. at 6.

¹⁰ Id.

¹¹ Id. at 39.

Section 1. *Filing of petition with Supreme Court.*—A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

On the other hand, the review of the decisions, awards and final orders or resolutions of quasi-judicial offices or bodies is through the petition for review under Rule 43, whose Section 1 states:

Section 1. *Scope.* — This Rule shall apply to appeals from xxx awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

Section 7, Article IX of the 1987 Constitution governs the review of the COA, in that the COA's decisions, final orders or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. To differentiate this review from the special civil action for *certiorari* under Rule 65, the Court incorporated a new rule (Rule 64) in the 1997 revision of the *Rules of Court* under the title *Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit*. Except for the period for bringing the petition for review, Rule 64 is a replication of the provisions of Rule 65 on the special civil action for *certiorari*.

Secondly, the recourse of the petitioner is also deficient in intrinsic merit.

The Constitution has made the COA "the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and

promulgate accounting and auditing rules and regulations.”¹² Only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain and grant a petition for *certiorari* brought to assail its actions.¹³

Herein, however, the petition for review is premised on the supposed misappreciation of facts by the COA. A careful examination of the records indicates that the COA committed no grave abuse of discretion in issuing the assailed decision. The COA thereby simply served its constitutional mandate and justly applied the pertinent laws and rules. It relied on the findings of negligence against the petitioner based on the ATL’s investigation and inspection report on her handling of the funds. Such findings are to be respected because they were supported by substantial evidence.

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 reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances.¹⁴ 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.¹⁵

The findings show that the petitioner was severely negligent in the performance of her duties as the disbursing officer. She did not properly discharge her responsibility to safeguard the public funds entrusted to her. The ATL found that she had withdrawn from a nearby bank the funds for salaries 13 days from the deadline for the submission of reports, and had placed the funds inside the safety vault despite the number combination having been left posted at safety vault’s very door. She was further found to have even failed to inform the security guard on duty that she had kept a considerable amount of cash in the safety vault if only to ensure that the amount would be safe.

The following provisions of Presidential Decree No. 1445¹⁶ are relevant herein:

Section 73. Credit for loss occurring in transit or due to casualty or force majeure.

¹² *Nazareth v. Villar*, G.R. No. 188635, January 29, 2013, 689 SCRA 385, 407.

¹³ *Id.*, citing *Reyes v. COA*, G.R. No. 125129, 29 March 1999, 305 SCRA 512, 517.

¹⁴ *Bulilan v. Commission on Audit*, G.R. No. 130057, December 22, 1998, 300 SCRA 445, 452, 453.

¹⁵ *Id.* at 453.

¹⁶ *The Government Auditing Code of the Philippines* (signed on June 11, 1978).

(1) When a loss of government funds or property occurs while they are in transit or the loss is caused by fire, **theft**, or other casualty or force majeure, the officer accountable therefor or having custody thereof shall **immediately notify the Commission or the auditor concerned** and, within thirty days or such longer period as the Commission or auditor may in the particular case allow, shall present his application for relief, with the available supporting evidence. **Whenever warranted by the evidence credit for the loss shall be allowed.** An officer who fails to comply with this requirement shall not be relieved liability or allowed credit for any loss in the settlement of his accounts.

(2) The Commission shall promulgate rules and regulations to implement the provisions of this section.

Section 101. Accountable officers; bond requirements.

(1) **Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor** and for the safekeeping thereof in conformity with law.

x x x x

Section 105. Measure of liability of accountable officers.

(1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. We shall likewise be **liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property, whether or not it be at the time in his actual custody.**

(2) **Every officer accountable for government funds shall be liable for all losses** resulting from the unlawful deposit, use, or application thereof and for all losses **attributable to negligence in the keeping of the funds.** (Bold underscoring supplied for emphasis)

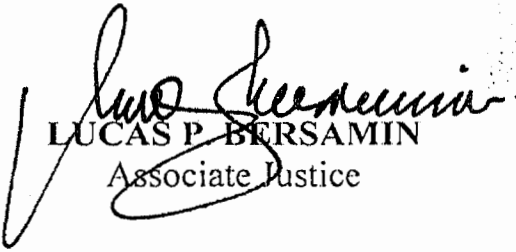
The conclusion that the COA correctly denied the petitioner's request for relief from accountability is thus inescapable. Being an officer of the Government having custody of public funds, she was fully accountable for the safekeeping of the funds under her custody. Although she could be exonerated from liability in cases of theft and loss caused by *force majeure*, she must be able to establish that the loss was not by reason of her negligence. She could have locked the safety vault, the steel cabinet, and the doors and windows of the office where the safety vault was kept, but the fact that she had not denied having allowed the posting of the number combination on the vault's door manifested her negligence. Indeed, they robbers did not anymore have to employ force to open the vault and ransack the contents. That they had an easy time carting away the funds was due to her negligence. Her contention that the loss of funds through robbery would still have happened even if she had removed the number combination from the door of the vault is unworthy of consideration in the face of the obtrusive

fact that her negligence had enabled the loss of the funds under her safekeeping.

Even if the posting of the number combination on the safety vault's door had not been at the instance of the petitioner herself, her exculpation from liability would still not be granted considering her failure to remove it therefrom. She should have easily anticipated that the posting of the number combination would leave the funds kept inside the vault prone to theft and robbery. Simple prudence on her part would have instructed her to remove the number combination from the safety vault's door; yet, she did not. Her leaving the number combination public in that manner defeated the purpose of having the vault to begin with. She thus was guilty of negligence.


WHEREFORE, we **AFFIRM** Decision No. 2012-174 dated October 29, 2012 of the Commission on Audit.

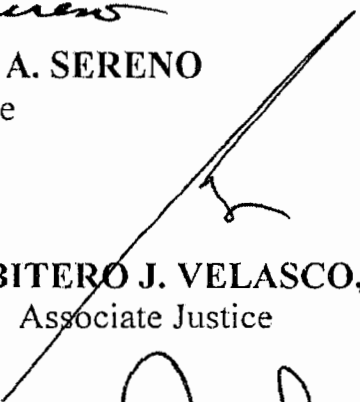
SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice


WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

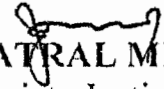

ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

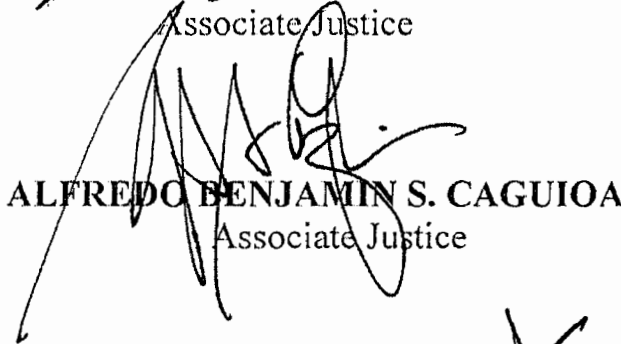

BIENVENIDO L. REYES
 Associate Justice

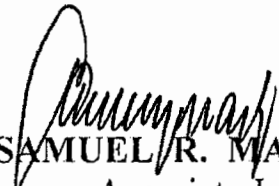

ESTELA M. PERLAS-BERNABE
 Associate Justice



MARVIC M.V.F. LEONEN
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice

*No part
 Pinst
 OSG
 action*

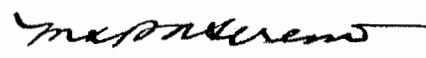

ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


SAMUEL R. MARTIRES
 Associate Justice


NOEL G. TIJAM
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.


MARIA LOURDES P. A. SERENO
 Chief Justice