

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MA. LOURDES V. BERNARDINO, ACCUSED-APPELLANT.

Ponente: GUARIÑA III, J.

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Ma. Lourdes Bernardino, an employee of a stock brokerage firm, was found guilty of theft under an information which charges her of feloniously stealing and carrying away several shares of stock belonging to her firm and received by her on its behalf.[1] At the time of the offense, the accused was discharging the duties of a settlement clerk and telephone operator of Alpha Securities Corporation which allowed her to deal with clients of the firm, notifying them of stock prices, handling all incoming stock certificates from the clearing house, and acting, to all intents and purposes, as an account executive.[2] While they had messengers to deliver the stock certificates to clients, she would sometimes be entrusted with the delivery of these certificates. It was one such occasion when she took custody of the certificates for delivery to a client which panned out to the present case.[3]

The evidence shows that a certain Dr. Sixto Tan was buying and selling stocks through Alpha Securities.[4] Among the stocks he acquired in March 1997 were 100,000 shares of Forum Pacific, 20,000 shares of SM Development Corporation, and 20,000 shares of Universal Rightfield, with a combined market value of P195,000, and whose stock certificates 018488, 05949 and 0017015 were in the possession of Alpha.[5] When Tan asked for the delivery of the certificates, Alpha's vice-president Geraldine Jane Ong turned them over to Cherry Magpayo who was the immediate supervisor of the accused. Before long, Tan was calling them up and inquiring why the certificates were not delivered.[6] Ong conducted a probe and from Magpayo learned that the stocks were turned over to the accused after she offered to deliver them personally to Tan.[7]

Alpha was ultimately constrained to settle with Dr. Tan. In July 1997, they delivered similar shares of stock to him worth P212,000 to replace the certificates that never reached his hands.[8] When the accused was asked to account for the missing certificates, she sat down to compose two separate statements in her own handwriting, one month apart, in which she detailed her personal drama from February 5 to June 17, 1997, interspersed with her visceral reactions over her fate, admissions of guilt and outbursts of self-pity for her bad judgment.

Her first narrative was dated May 17, 1997.[9] A certain friend of hers, Alyssa Apolonio, wanted to buy stocks, but did not have the ready funds. So the accused referred her to another stock brokerage firm, Pierce Interlink Securities. Not being able to come up with the money, Alyssa tricked her into issuing a check to Pierce on the promise that she would deposit the funds to her personal account. When she did not fund the check, the accused was left to face the wrath of a Pierce executive. In order to pay off the account, she had to borrow money from another person named Joel, and was again pressured to settle with him. That was when the stocks of Dr. Tan came in handy. She got hold of the certificates intended for Tan and delivered them to Pierce for the purpose of putting them on sale for her benefit. Pierce sold the stocks on April 14 and 15, 1997. She received a check payment from Pierce and, with it, paid her debt to Joel.

Her problem now was with her own firm Alpha. In her second written statement on June 17, 1997,[10] she narrated how she tried in vain to settle with Alpha. It was a case of *nemo dat qui non habet*. She thought of getting

a loan from the SSS or Pag-ibig but could not come up with the collateral. She could do nothing more than bide for time.

Negotiations for a settlement appeared to have resumed in earnest after the criminal case was filed. The court even indulged the parties by sending the case to the archives while they were discussing terms.[11] But it was a futile exercise. Alpha soon moved for a revival of the case stating that the accused issued checks which only bounced.[12] She had executed written commitments to pay which were marked by the prosecution as Exhibit J,K, L, but were denied admission in view of the objection of the defense that they were not formally presented in evidence.[13] The gaps in the testimony of the prosecution's lone witness Geraldine Jane Ong were, surprisingly, more than made up by the readiness with which the accused made written admissions against her own interest and the total lack of interest on her part to explain away her admissions. She did not take the witness stand nor presented any witness of her own to prove any possible exculpatory fact.

The trial court, in a decision on February 27, 2002,[14] rationalized its conviction of the accused with the observation that the admission of the accused in Exhibit C and D have proven that she took the certificates of stock that were in the lawful possession of Alpha and instead of delivering them to the owner Tan, sold them to another broker without authority from Alpha or Tan. Her deliberate failure to deliver the certificates to Tan evidenced an intent to gain on her part which is determinative of the crime of theft. She was sentenced to an indeterminate penalty of 6 years and 1 day to 17 years and ordered to indemnify the private complainant Alpha Securities the sum of P125,000 in actual damages and pay the costs.

The accused appeals on the sole issue that the evidence is insufficient to establish his guilt of the crime.

We affirm the conviction.

Article 308 of the Revised Penal Code concisely defines theft as an offense committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, takes the personal property of another without the latter's consent. It is a taking of personal property of another with intent to gain but under circumstances that do not amount to the more serious offense of robbery against persons or things. Theft, from the statutory definition, consists of the following essential elements : (1) a chattel or other personal property is taken, (2) there is an intent to gain in the taking, (3) the property stolen is owned by another, and (4) in the taking, neither violence against person nor force upon things is employed. Soriano vs People 88 Phil 368.

All these elements have decidedly been established in this case through the cumulative weight of the testimony of the prosecution witness Ong and the admissions contained in the written statements of the accused marked as Exhibit C and D. We have no difficulty in resting conviction on the testimony of only one witness if it is credible and positive, People vs Javier 182 SCRA 830, and as reinforced by admissions of the accused which were neither denied nor reinvented by her.

The fact that the stocks do not belong to the accused is beyond dispute. As testified to by Ong, they are owned by Tan and in the possession of his broker Alpha Securities. The accused never denies this, and thus the element that the property stolen belongs to another is established. The accused steps forward to affirm the rest of the unremitting elements of the asportation. She came to have possession of the certificates after Ong handed them to Magpayo for delivery to Tan. She stated categorically : All his stock certificates stayed with me for 2 weeks.[15] Buckling under the pressure of her own creditor, she decided to trade the certificates to her personal advantage. She again said : I gave the 3 stock certificates of Dr. Tan to Pierce – SMDC, FPI and UP[16] on April 1 and 2, 1997.[17] Pierce held on to the stocks for another two weeks before selling them on April 14 and 15, 1997. She received payment in check and turned over the amount to Joel as settlement of her account with him.[18]

The actual transfer of possession to the accused need not be unlawful at the start. Theft may take place where a person who takes possession of a thing in a lawful way subsequently disposes of it without the knowledge and consent of the owner. In this case, the unlawful taking becomes the unauthorized selling of the thing by the accused after it was given to and received by her. As stated in *United States vs De Vera* 43 Phil 1000, if the owner parts with the possession of a particular purpose, and the person who receives it for that purpose has the fraudulent intention to make use of it in another way and does so, this is theft. In *People vs Rodrigo* 16 SCRA 475, intent to gain is considered presumed from the failure of the accused to deliver the thing to the proper person.

In fine, the accused was properly held guilty of the offense charged. The trial court observed that the accused made a partial payment of P70,000 to Alpha reducing the amount of the demand to P125, 000.[19] The penalty of simple theft under Article 309 of the Revised Penal Code where the amount of the damage found is P125,000 – P103,000 more than P22,000 – will be reckoned from the maximum period of the prescribed penalty of prision mayor in its minimum and medium period. Following the table of penalties computed by Justice Luis Reyes in his book on the Revised Penal Code, 1998 edition, at 1012-1013, the initial range is 8 years 8 months and 1 day to 10 years. The lowest we can go within this bracket is 8 years 8 months and 1 day, and to it, we add 10 years representing one year for each additional P10,000 as required in Article 309, for a total of 18 years 8 months and 1 day. This is our benchmark for the maximum period of the imposable penalty. To determine the minimum, we apply the Indeterminate Sentence Law[20] to reduce by one degree the prescribed penalty of prision mayor in its minimum and medium period. This will be prision correccional in its medium and maximum period which is 2 years 4 months and 1 day to 6 years. In the exercise of our discretion, we fix the minimum of the imposable penalty at 2 years 4 months and 1 day.

IN VIEW OF THE FOREGOING, the decision appealed from is MODIFIED in that the indeterminate penalty shall be 2 years 4 months and 1 day, prision correccional medium, to 18 years 8 months and 1 day, reclusion temporal, maximum. In all other aspects, the decision is AFFIRMED.

SO ORDERED.

Barrios, (Chairman) and Romilla-Lontok, JJ., concur.

[1] Records, at 1.

[2] Tsn November 19, 1999, at 45-49.

[3] The case is docketed as criminal case 97-1647 and came before Branch 63 of the Regional Trial Court of Makati.

[4] Tsn October 4, 1999, at 12.

[5] Exh. A, tsn October 29, 1999, at 32-34.

[6] Exh. G.

[7] Tsn November 19, 1999, at 3-36.

[8] Exh. B, tsn October 29, 1999, at 17, 32-34.

[9] Exh. C.

[10] Exh. D.

[11] Records, at 75.

[12] Ibid., at 77.

[13] Ibid., at 258, 260.

[14] Ibid., at 355-357.

[15] Exh. C-3.

[16] This should be UR – for Universal Rightfield. See note 5.

[17] Exh. C-3.

[18] Ibid.

[19] Tsn October 29, 1999, at 33.

[20] Act 4103, as amended.

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