

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. FELIPE S. TANJUTCO, DEFENDANT-APPELLANT.

G.R. No. L-23924. April 29, 1968

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

In an information filed in the Court of First Instance of Manila (Crim. Case No. 34595) on March 5, 1956, Felipe S. Tanjutco was accused of the crime of qualified theft, allegedly committed as follows:

“That in, about and during the period comprised between January 7, 1953 and January, 1955, inclusive, in the City of Manila, Philippines, the said accused, being then the private secretary of Roman R. Santos, and as such is entrusted with the duty of depositing large sums of money in the bank for and in behalf of the said Roman R. Santos, with grave abuse of confidence did then and there willfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away various sums of money amounting to P400,086.19, belonging to the said Roman R. Santos, to the damage and prejudice of the said owner in the aforesaid sum of P400,086.19, Philippine currency.”

After a protracted trial, decision was rendered on October 14, 1964, the court finding the accused guilty beyond reasonable doubt of the crime charged, and sentencing him to life imprisonment and to the accessory penalties of the law, to indemnify the estate of the deceased Roman R. Santos in the sum of P400,086.19, and to pay the costs.

From this decision, the accused appealed to this Court assigning 15 errors allegedly committed by the court below, all boiling down to the question of sufficiency of evidence to support the lower court's conclusion that he had misappropriated the total sum of P400,086.19, and in sentencing him to life imprisonment. In short, the main issue here is not whether the accused had committed acts of misappropriation, but how much he had misappropriated, according to the evidence on record.

The abovementioned 1 judgment of the court below was based on the findings that during the period specified in the complaint, the accused was the private secretary of the complainant Roman R. Santos, businessman, financier and, at the time, Chairman of the Board of Directors of the Prudential Bank and Trust Company (PBTC) which he had founded. As such secretary to the Board-Chairman, the accused held office in the bank premises, had free access to all offices of the bank and free use of its equipment. The relationship between the accused and his employer was so intimate and confidential that the latter used to send to the former sums of money to be deposited in his (Don Roman's) current accounts with the Prudential Bank. It was in the discharge of this duty that the accused betrayed, the confidence reposed on him by his employer by retaining for his personal use part of the money entrusted to him, resulting in shortage in the accounts of the employer, which was discovered only in January, 1957.

The intricate operation said to have been resorted to by the accused and enabled him to cover up his defalcations for some time, was succinctly described in the decision now on appeal, thus:

“Mr. Santos (Roman) maintained four accounts, all current, with the bank. They were identified as accounts Nos. 1, 2, 3, and 4. Every time Mr. Santos sent money to the accused to be deposited, the former indicated the current account number to which said amount should be deposited. The accused would then deposit the amount with the bank and obtain a duplicate of the deposit slip duly stamped by the bank. This duplicate deposit slip would later on be shown to Mr. Santos to satisfy the latter that the money entrusted to the accused was already deposited according to his instructions. After the latter shall have checked the correctness of the amount appearing in the duplicate deposit slip, he would return said duplicate to the accused for safekeeping.

“For its part, the bank kept the original of the deposit slips and a separate ledger for each account of every depositor. In this ledger were entered the deposits and withdrawal during the month, arranged according to the dates of the transactions. Said entries were taken from the original deposit slips in its possession.

“In the case of Mr. Santos, the deposit slips prepared by the accused indicated the account number to be credited with the amount of each deposit and the check used in withdrawing from the deposits likewise carried the account number to be debited with the amount of the check. These ledgers were prepared in duplicate, and the bank sent the duplicate to” the depositor after the end of each month. In this manner, the depositor could check the duplicate deposit slips in his possession with the entries in the duplicate ledger received by him monthly to determine whether or not correct entries of the deposits and withdrawals were made.

“The accused, at first, proved to be loyal, faithful and trustworthy a secretary and confidant as his employer wished and thought him to be. Later on, however, he was tempted to use part of the money entrusted to him. Probably, he expected to replace it before his dishonesty was discovered. However, the temptation to use more of the money entrusted to him was stronger than his will to replace the amounts he abstracted. Hence, the amount he stole grew bigger and bigger until he realized that it was only a question of time when his crime would be discovered

“Sometimes, he deposited a smaller amount than that he received from his employer. At times, he did not deposit anything at all, altho he received money for deposit.

“To hide his crime, the accused used to falsify duplicate deposit slips which he showed to Mr. Santos. And when he received the monthly customer's ledger, he likewise falsified a duplicate monthly customer's ledger, entering in the falsified ledger the correct amount he received from Mr. Santos for deposit in place of the amount he actually deposited. It was this falsified ledger which the accused showed to Mr. Santos monthly. It is obvious that Mr. Santos could not detect any defalcation if he relied solely on the falsified duplicate deposit slips and falsified duplicate customer's monthly ledgers.”

Appellant does not dispute that a number of duplicate deposit slips and monthly bank statements, supposed to have been submitted by him to complainant Roman Santos, were found to be falsified. What he is contesting here is the lower court's finding that he, appellant, authored such falsifications, which conclusion, he claims, is not supported by the evidence.

This allegation is without merit. We found established, through the testimony of prosecution witnesses, that when he deposited money for the accounts of complainant Roman Santos, accused-appellant used to prepare two deposit slips - one, the original, to be submitted to the bank, and the other to be shown to Don Roman and later to be kept in his file;^[1] that the accused himself picked up the monthly bank statements of Roman R. Santos,^[2] which he would either withhold or destroy; that he would thereafter prepare in the bank machine after office hours, other statements indicating amounts he purportedly deposited,^[3] although actually the deposits must have been for lesser amounts or no deposits were made at all (as later revealed by the original deposit slips and bank ledgers). It is true that not a single witness testified to having personally seen the accused in the act of falsifying

the duplicate deposit slips or bank statements. But direct evidence on this point is not imperative. Considering that it was the accused-appellant who prepared the original and deposit slips; that there appeared discrepancies between the original deposit slips retained by the Prudential Bank and the duplicates thereof which were found by the auditors; that the amounts indicated in the originals were accordingly credited by the bank for the account of the depositor Roman R. Santos; that there were supposed duplicate deposit slips, duly signed by accused-appellant which contained forged initials of the bank-teller, or else not covered by any original slip at all;^[4] that accused-appellant admitted, not only of having manipulated the records of his employer, but also of having been able, by that means, to abstract an undetermined amount from the funds of the latter^[5] no other conclusion could be drawn from the foregoing facts than that the falsified documents were the ones prepared by appellant to hide his misdeeds. Even assuming these evidences to be circumstantial, they nevertheless constitute legal evidence^[6] that may support a conviction, affording as they are basis for a reasonable inference of the existence of the fact thereby sought to be proved.^[7]

Contrary to appellant's contention, there is even no necessity for all these duplicate deposit slips to be identified one by one, before they may properly be considered against the accused. These slips were not only bundled into a bunch and formally presented as Exhibit Q; they had also been consistently referred to as one of the bases of the prosecution's claim that the misappropriated amount totalled P400,086.19. As ruled by this Court in another criminal case, the absence of any record of the formal presentation of certain exhibits does not render their consideration reversible error, if repeated references thereto in the course of the trial by counsel for the accused and of the court convincingly show that the documents were part of the prosecution's evidence.^[8] No error, therefore, was committed by the trial court in giving due credence and weight to the deposit slips (Exh. Q).

Appellant also challenges the competence of 40 duplicate deposit slips which do not bear his signature, and urges that the amount covered thereof - P233,744.63 - should be deducted from the total amount covered by the duplicate deposit slips coming from the files of Don Roman Santos.

We have gone over these 40 documents, and found the following:

One (1) deposit slip, dated July 21, 1953 for P13,283.07, Account No. 2; although unsigned by accused-appellant, this tallies with an original deposit slip retained by the Prudential Bank. The amount it covered was duly credited for the account of Roman R. Santos as per the bank ledger, Exhibit Y-8.

Two (2) duplicates dated November 19, 1953, for P2,562.00 and P2,689.00, respectively (Account No. 4), are evidently genuine; they tally with the originals. The amount they covered were credited in favor of complainant Roman Santos (Exh. R-2b).

One (1) duplicate dated September 8, 1953, for P8,762.07, for Account No. 2, tallies with the original (Exh. 6), and the amount covered thereby is duly credited for the account of complainant Santos.

One (1) slip dated September 10, 1953, for P12,274.65 (Account No. 2), is supposed to be the duplicate of the original (Exh. Q-29). It is noted, however, that while in the original, the cash deposit was P1,535.20, which amount was accordingly entered in the bank ledger for the account of complainant Santos, in the purported duplicate, the cash deposit was placed only at P1,319.65. The total amount covered by this particular duplicate deposit slip (P12,274.48), is not deductible from the sum covered by all the duplicate deposit slips found in the possession of complainant Roman Santos, because it is clear that the said amount of P12,274.48 was actually received by the accused and in fact deposited by him in the bank.

Nine (9) duplicates (Account No. 2), all dated June 17, 1954, for P5,523.78, P500.00, P1,000.00, P733.51, P564.25, P1,000.00, P974.57, P3,000.00, P3,058.84, respectively, tally with the originals left with the bank (Exh.

7), and the amounts thereby covered were duly credited in favor of complainant Santos (Exh. Z-10). It was noted that no signature also appears over the appellant's typewritten name even in the originals submitted to the bank.

Six (6) duplicate slips (Account No. 2) for P1,724.40, P1,509.20, P1,510.30, P1,485.75, P1,487.85 and P3,851.14, all dated October 13, 1954, are genuine duplicates of the originals in the possession of the Prudential Bank. It may be mentioned that where the duplicates are duly covered with original deposit slips, the number and denomination of the cash deposits made were noted in said original slips. Both original and duplicate slips of these deposits are not signed; the amount thus covered were duly credited to the complainant Santos (Exh. Z-14).

One (1) duplicate slip dated November 9, 1954, for a deposit of P1,782.00; one of the several deposits made by the accused for the account of complainant Santos on the same day. Both the original and duplicate slips have no signature over the typewritten name of appellant. Amount covered thereby duly credited in favor of complainant (Exh. Z-16).

Thirteen (13) unsigned duplicate deposit slips (Account No. 2), for P1,281.00, P1,374.45, P1,323.00, P1,416.96, P1,256.64, P1,346.40, P1,330.17, P1,438.80, P1,490.00, P1,201.00, P1,122.70, P1,747.27 and P1,235.52, respectively, formed part of a group of 25 deposit slips, all dated December 23, 1954. These 13 unsigned duplicates, however, have their corresponding originals in the custody of the bank, and the amounts they covered were duly credited to the account of complainant Santos. They are apparently genuine copies of the originals (Exh. Z-16).

One (1) duplicate deposit slip dated March 12, 1954 (Account No. 3). This slip was accomplished in handwriting, on the face of which was written diagonally: "Non-negotiable PBTC Teller No. 2 (True Copy)"; the covered amount of P7,809.40 was duly credited in favor of the complainant. This is apparently a reconstructed duplicate of the original.

One slip dated January 5, 1953, bearing the rubber stampmark on PBTC Teller No. 4, but without said teller's initials. No signature also appears over the typewritten name of the depositor "F. S. Tanjutco." This slip purportedly showed that a cash deposit of P2,034.15 and checks for P8,917.33 were made on that day. A checking of the bank entry for that day established that seven out of the eight checks specified in this duplicate deposit slip (PBTC Checks Nos. 12955, for P1,081.10; 12959 for P941.31; 12960 for P545.88; 12961 for P871.66; 12963 for P440.00; 12978 for P2,887.38, and 12979 for P150.00) were debited as withdrawals from the same Account No. 2 on January 5, 1954. Clearly, this supposed duplicate slip is falsified. Considering that by appellant's own admission, he was able to cover up the shortages in the funds of his employer by manipulation of records and documents (see the testimonies of witnesses Amado S. Carlos, Felix Costa and Nazario L. Cruz),^[9] the inclusion of the amount covered by this slip in the computation of the sum for which appellant is accountable, is justified. The very existence of this simulated deposit slip is sufficient proof that it was intended to be shown to complainant Roman Santos and thus escape detection by the latter of appellant's defalcation of his (complainant's) funds.

Two (2) deposit slips purporting to be duplicates, but without the corresponding originals, dated December 16, 1954 and December 27, 1954 for P2,780.27 and "P1 26,692.89, respectively, did not have appellant's signature; said amounts were not also reflected in the bank ledger as actual deposits made by appellant. Nevertheless, we have to sustain the inclusion of these amounts in the computation of the money under appellant's accountability for the same reason as that given in the discussion of the preceding item.

These 40 duplicate deposit slips were admitted by the Court below, not to prove falsification, but only to establish the fact that accused-appellant has received money to be deposited for the account of his employer, and determine the exact amount thus received. The relevancy of these documents to prove the fact is not affected by the absence

of appellant's signature thereon.

In the first place, having been passed upon and favorably considered by the trial court, the matter of relevancy of these documents ordinarily cannot be reviewed on appeal. This lies within the sound discretion of said court and deserves the respect of the appellate tribunal.[10] Secondly, most of the amounts covered by these 40 deposit slips are sufficiently backed by the original deposit slips and the bank ledgers. And, there is no showing that the figures indicated in both the original and duplicate slips are separately treated or that the amount thus covered is included twice in the summing up of the missing amounts. As regards those without corresponding originals, we have given the reason for their inclusion in the total sum for which appellant is accountable, in our discussion of those individual items. Furthermore, it appearing that even some of the original deposit slips delivered to the bank do not bear appellant's signature, the absence alone of such signature is no indication that the 40 duplicate slips in question were not in fact prepared by him.

Appellant likewise assails the admissibility of entries appearing in the ledgers of the Prudential Bank (Exhs. W, W-1 to W-4, X, X-1 to X-6, Y, Y-1 to Y-13, Z, Z-1 to Z-18, TT, TT-1 to TT-5), of the bank statements from its file (Exhs. R, R-1 to R-5), and the monthly bank statements taken from the files of complainant Roman Santos (Exhs. S, S-1 to S-3), claiming that under the prosecution's theory,[11]the best evidence to prove his guilt would be the original slips and their duplicates.

There is no merit to the contention. It must be remembered that the prosecution had to prove the amount allegedly embezzled by the accused. This, the prosecution tried to do by establishing the amounts received by the accused-appellant and comparing it with those deposited in the bank; the resulting difference being treated as the amount abstracted from the funds of the complainant. Under this theory, the ledgers and bank statements naturally are not just secondary, but the primary evidence of the deposits made, while the monthly bank statements found in the files of complainant Roman Santos which were supposed to confirm the amounts he had ordered the accused-appellant to be deposited, are the best evidence of the amounts actually entrusted to the latter. Consequently, the trial court committed no error in ruling in favor of the admissibility of the above-mentioned exhibits.

We also find as untenable appellant's allegation that there was no "positive, direct evidence" to show that the monthly bank statements found in the file of the complainant were the same documents delivered by him to the latter. By urging in his Fifth Assignment of Error the deduction from the total sum covered by all the duplicate deposit slips coming from the files of complainant, of the amounts covered by the 40 unsigned deposit slips, claiming that the resulting difference is the "correct total amounts covered by duplicate deposit slips for which accused can be held liable" (p. 27, appellant's brief), said accused-appellant in fact acknowledged that these duplicate deposit slips were the ones delivered by him to complainant Santos.

Neither would it be accurate to say that the decision of the lower court was based solely on the alleged hearsay report of the auditing firm of Costa & Cruz (Exh. P). Said court, in its decision, stated:

"The auditors Costa and Cruz found that the accused manipulated only accounts Nos. 2, 3, and 4. As stated above, he at various times deposited less than what he received for deposit and at times he did not deposit anything at all but simply used the entire amount he received for deposit. To cover up for his criminal act and in order to avoid detection especially when he feared that Don Roman Santos might make a big withdrawal, the accused also resorted to transferring of funds of Don Roman from his fixed deposits to his current account. The report of the auditors (Exh. P) is clear and the evidence introduced in Court in support of their report and the testimony of Mr. Costa convinced the Court aof the correctness of the figures arrived at by them." (Decision, pp. 8-9).

In other words, the lower court gave due weight to the report of the auditors because it was found to be clear and

duly supported by testimonial and documentary evidence (monthly bank accounts, bank statements, deposit slips — the materiality and relevancy of which were already here sustained) presented during the trial, to which conclusion we fully agree.

After going with the evidence on record, the court below concluded that the accused had defalcated out of the money delivered to him for deposit in the bank, the following amounts:

I. Deficiency from:

a. Account No. 2

(Exhibit No. I)

1954 P134,105.89

1955 15,760.58

P149,866.47

b. Account No. 3

(Exhibit No. II)

1953 P 14,405.05

1954 13,1 14.01

P27 519 06

c. Account No. 4

(Exhibit No.III)

1953 P 23,733.87

1954 198,725.83 P222,459.70

Total shortage of Accounts - P399,845.23

Nos. 2, 3 & 4

II. Interest from FIXED DEPOSIT:

a. F/dNo. 182 12/27/54

Schedule I Notation P20.95

b.F/dNo.208 1/20/54

220.00

240.96

TOTAL SHORTAGES P400,086.19

Appellant maintains that the amount he misappropriated could not have exceeded P50,000.00. But this allegation is not only unsupported by any corroborative evidence, but is in itself uncertain, appellant having admitted in court that he never kept any record of the sums he abstracted from the funds of the complainant, and that the amount of "P50,000.00 was only his estimate (t.s.n., p. 2114, hearing of Feb. 24, 1964). Such bare testimony indeed cannot overcome the prosecution's proof that the unaccounted amount, for which appellant is answerable, totalled P400,086.19.

Finally, making capital of the acceptance by complainant of properties belonging to the accused and his relatives allegedly assigned to the former for the settlement of his obligations, accused-appellant claims that there had been novation of the relationship between him and the said complainant, resulting in the obliteration or extinction of his criminal liability. This argument is anchored on the alleged recognition by this Court of the novation theory (to extinguish criminal liability) in the case of *People vs. Nery*, G.R. No. L-19567, February 5, 1964.

Reliance on the aforecited *Nery* case, in support of the contention that the acceptance by complainant of payment converted the liability of the accused-appellant into a civil obligation or else that it estopped said complainant from proceeding with the prosecution of the case, is misplaced and unwarranted.

Firstly, in the *Nery* case, which is an action for estafa, there was contractual relationship between the parties that can be validly novated by the settlement of the obligation of the offender. Whatever was said in that case, therefore, cannot be invoked in the present case where no contractual relationship or bilateral agreement, which can be modified or altered by the parties, is involved. There is here merely a taking of the complainant's property by one who never acquired juridical possession thereof, qualified by grave abuse of confidence.

Secondly, it is inaccurate to say unqualifiedly that the theory that payment can obliterate or extinguish criminal liability was upheld in the *Nery* case. On the contrary, it was there explicitly said:

"It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to (cf. *Abeto vs. People*, 90 Phil 58; *U.S vs Villareal*, 27 Phil. 481).

"Even in Civil Law the acceptance of partial payments, without further change in the original relation between the complainant and the accused, cannot produce novation. For the latter to exist, there must be proof of intent to extinguish the original relationship, and such intent cannot be inferred from the mere acceptance of payments on account of what is totally due. Much less can it be said that the acceptance of partial satisfaction can affect the nullification of a criminal liability that is fully matured, and already in the process of enforcement. Thus, this Court has ruled that the offended party's acceptance of a promissory note for all or part of the amount misapplied does not obliterate the criminal offense. (*Camus vs. Court of Appeals*, 48 O. G. 3898)."

Assuming, therefore, that there was partial payment[12] by the accused-appellant of the amount he misappropriated, that would not have sufficed to bar the filing and prosecution of the criminal case for qualified

theft against him, considering that he concedes having actually used money belonging to his employer although in an amount less than P400,086.19. Furthermore, it may be mentioned that the mother and sister of accused-appellant, before the criminal case here was filed, instituted in the Court of First Instance of Pampanga an action for annulment of the deeds of assignment of their properties (Civil Case No. 875) on the ground that they were induced to execute the same through fraud and deceit. In view of our ruling on the foregoing issue, the outcome of this annulment-case will certainly not affect the accused-appellant's liability for the crime he had committed.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, in all respects, with costs against the appellant.

Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgment affirmed.

[1] t.s.n., pp. 257-259, 269-270, hearing of Dec. 2, 1957; pp. 790, 818, hearing of July 20, 1959.

[2] ts.n., pp. 269-270, hearing of Dec. 2, 1957; p. 657, hearing of June 29, 1959.

[3] ts.n., pp. 260-261, hearing of Dec. 2, 1957; p. 818, hearing of July 20, 1959.

[4] Exhs. Q-1 to Q-28, 30a; t.s.n., pp. 1049-1092, 1111, hearing of July 20, 1960.

[5] t.s.n., p. 818, hearing of July 20, 1959.

[6] De Reeder vs. Travelers Ins. Co., 198 A. 45, 329 Pa. 328.

[7] See Vol. 4, Martin, Rules of Court of the Philippines, 1966 ed., p. 22.

[8] People vs. Roxas, H6947, Nov. 29, 1962.

[9] t.s.n., pp. 51-52, hearing of Oct. 4, 1957; pp. 257-261, hearing of Dec. 2, 1957; pp. 790, 818, hearing of July 20, 1959.

[10] 20 Am. Jur. 241; Vol. 4, Martin, op. cit., on p. 23.

[11] That the accused was entrusted to deposit money in the name of Don Roman Santos with the Prudential Bank; that he deposited with the bank only part of the money thus entrusted to him, or none at all; that in depositing various amounts, he prepared two deposit slips - one original and one supposed duplicate; that the original which was delivered to the bank together with the money represents the actual amount deposited in the accounts of Roman Santos, but the duplicate which he submitted to the latter as proof that the money he received were actually deposited, contains an amount more than what was in reality deposited by him.

[12] The real and personal properties assigned to complainant, by means of deeds of assignment executed by the accused, his wife, parents and sisters on February 12, 15 and 16, 1955, are said to be worth P134,136.09, whereas the misappropriated amount was placed at P400,086.19.

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