

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RHODORA R. CEREZO, DEFENDANT-APPELLANT.

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

From an adjudication of perdition on February 9, 2011 for hurto con grave abuso de confianza,[1] an appeal was interposed by the accused before Us to assess the disposition against her in this manner:[2]

“WHEREFORE, the court finds the accused RHODORA CEREZO GUILTY as principal beyond reasonable doubt of QUALIFIED THEFT, and hereby sentences her to suffer the penalty of RECLUSION PERPETUA and to pay the offended party, OMS PHILIPPINES CORPORATION, the amount of Php1,489,731.70.

SO ORDERED.”

Cutting through minutiae, the initial indictment for Estafa through Falsification of Commercial Document before the Mandaluyong Prosecutor’s Office was amended to Qualified Theft.[3]

When arraigned on the modified charge[4] on May 6, 2002, appellant pleaded “Not Guilty”[5] and upon conclusion of the pre-trial conference, trial on the merits thereafter ensued through the People’s testimonial sponsors.

Appellant was first hired as filing clerk in 1991 by OMS Philippines Corporation. She was promoted as Head of the Payroll and Billing Section in January, 1996. Her functions and responsibilities included the preparation of billing statements of their customers and payroll of all the employees both for international and domestic projects. The payrolls were prepared every 15th and 30th day of the month. Appellant would prepare (1) a covering letter instructing Metrobank Boni Avenue Branch to deduct a certain amount from the OMS Savings Account; and (2) a bank transmittal containing the names of the employees, their corresponding salaries and their respective account numbers. The entries in the payroll were based on the number of hours rendered by the employees.

In the last week of October, 1999, appellant went on maternity leave. However, she requested Elmer Lumapguid, the President of the company, that she be allowed to continue preparing the payroll of all employees. Lumapguid acceded because he knew that appellant needed money for her delivery. Lumapguid noticed that despite the fact that appellant was receiving a monthly salary of P10,000.00, she managed to buy a brand new Isuzu vehicle and a house and lot during her employment at the OMS.

Sometime in November, 1999, while appellant was still on maternity leave, appellant's husband went to the office to submit the payroll for November 16-30, 1999. In a brown envelope where the payroll was placed, Lumapguid found a bank withdrawal slip and a bank transmittal with a note to Manang Virgie, the Cashier of the Company, with jottings: “To Manang Virgie, withdrawal, P21,000.00; PD P8,500.00; collection P29,500.”

Lumapguid suspected that there was an anomaly in the preparation of the payroll. He then sought the help of the Operation Manager to verify the payroll prepared by appellant. Upon verification, they found out that there was a discrepancy between the payroll made by appellant and the computation made by the Operation Manager. The

discrepancy was more or less equal to the bank withdrawal slip found in a small letter envelope. They discovered a Metrobank ledger of account of appellant and learned that every payday, she would deposit P25,000.00 to P30,000.00 to her savings account at the Metrobank Boni Avenue Branch.

Lumapguid thereafter hired the services of an Auditor to verify the discrepancy between the bank transmittal and the payroll. It was discovered on the Audit Report that appellant had been misappropriating money from OMS since 1997 which amounted to P1,489,731.70.

After further investigation, Lumapguid ascertained that appellant resorted to two (2) modes of stealing money from the company. The first mode was her preparation of two sets of payroll: one with the overstated amount and the second is the real payroll, where appellant will submit the bank transmittal for the signature of the treasurer and herself and she will attach the overstated figures, then after signing, she would replace it with the real payroll and write her name under the Savings Account Number with the Metrobank, Boni Avenue Branch. The second mode employed by appellant was her preparation of an overstated amount but the figure will be named only to one person under the account of Fidelito Garcia and the difference would be credited to Garcia's account and the latter will sign a bank withdrawal slip for the accused to withdraw the amount in the account of Garcia.

Appellant was requested to report to the office to explain her side. When appellant arrived, she was apologetic and even promised to pay the amount she got. However, after the expiration of her maternity leave, appellant no longer reported back to work. A Demand Letter[6] was sent to her, but to no avail.

To controvert the evidence of the prosecution, the accused sat on the witness and the crux of her exculpation was premised on denial.[7]

After trial, the court a quo rendered the verdict on February 9, 2011,[8] which adjudged appellant guilty beyond reasonable doubt for the amended charge, and her subsequent Motion for Reconsideration[9] was denied in an Order[10] dated October 7, 2011.

Thus, appellant sought recourse before this Court, which imputed the sole assignment of error supposedly committed by the court a quo:

“THE HONORABLE COURT, WITH DUE RESPECT, COMMITTED AN ERROR IN CONVICTING THE ACCUSED AS THE PROSECUTION FAILED TO PROVE HER GUILT BEYOND REASONABLE (SIC).”[11]

After examining the record on hand, We find no cogent foundation to overrule the trial court's observations.

Article 308 of the Revised Penal Code is the general repository of hurto or larceny in American Law:[12]

“ART. 308. Who are liable for theft.--Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or

other forest or farm products.”

Accordingly, the elements of the crime of Theft are as follows: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.[13]

Theft becomes qualified under Art. 310 of the RPC, when it is, among other matters, committed with grave abuse of confidence, thusly:

ART. 310. Qualified Theft.--The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

Necessarily, theft is qualified when any of the following circumstances is present: (1) the theft is committed by a domestic servant; (2) the theft is committed with grave abuse of confidence; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[14]

All of the foregoing elements for Qualified Theft were present in this case: First, there was asportation of personal property. Second, there was animus furandi. Third, the taking was without the consent of the owner and fourth, appellant acted with abuse of the confidence reposed in her as the Head of the Payroll and Billing Section.

Appellant averred that the lower court erred in adjudging her participation for qualified theft amidst the failure of the prosecution to offer evidence that would directly indict her for the act of falsification of payroll and other commercial documents.

We were far from convinced.

Unlike appellant's bare ascription against the trial court, We subscribe with the lower court's evaluation of sufficient circumstantial evidence, nay, indirect evidence as matrix for the conclusion that appellant was the culprit for debiting money from the company's account, viz:

“...the prosecution was able to prove that accused deposited money in the bank account of Fidelito Garcia, which accused represented to Garcia as the proceeds of her collection from the employees of the USAID every pay day on the 15th and the 30th of the month. Once the accused make the deposit in the bank account of Garcia, she would also let Garcia sign a bank withdrawal slip to enable the accused to withdrew (sic) the money which she had deposited in the account of Garcia. Accused failed to rebut the testimony of Garcia, and even the declaration of Mr. Elmer Lumapguid that she was able to purchase a vehicle including a house and lot notwithstanding her meager salary. Accused prepared the salary payroll of USAID employees, who received their salary through ATM. Accused received her 15[th] and 30[th] salary of the month in cash evidenced by her payslips showing her signature for 1997, 1998 and 1999. This was testified by Virginia Painitan, cashier of OMS Philippines Corporation. In fact, on two or three occasions, accused requested Painitan to deliver sealed envelopes to the manager of Metrobank, Boni Avenue Branch. Prosecution's evidence proved that she forged and falsified the payroll of complainant's employees deployed at USAID project, by making the amount of the payroll higher than the worker's actual salary for the period and crediting the difference to her own personal account and the account of Fidelito Garcia, and the accused knew that it was not true but only as a means to

steal complainant's money in the bank by debiting the said amount from complainant's account.”[15]

It must be echoed that appellant, as Head of Billing and Payroll Section, had easy access to the list of employees, their corresponding salaries as well as their respective account numbers. Therefore, it would not be impossible or difficult for appellant to overstate the salary. Clearly, appellant gravely abused the trust and confidence reposed upon her by the management of OMS. Specifically, she used her position to utilize money from the company by making the amount of the payroll higher than the actual salary of employees and pocketed the excess amount for her personal benefit. Such sinister plot was bolstered by the Audit Report which showed that appellant had been misappropriating money from the company since 1997 and these pecuniary sums were deposited to her savings account at the Metrobank Boni Avenue Branch. The total amount which appellant surreptitiously took from OMS amounted to P1,489,731.70. Verily, the representatives from Metrobank, namely: Edgardo Alcantara and Mary Grace Delica and Fidelito Garcia and Virginia D. Painitan, both employees of OSM, confirmed the findings of the Auditor hired by the President of the Company.

For circumstantial evidence to be sufficient for conviction, the following conditions must be satisfied:

- “(a) There is more than one circumstance;
- (b) The facts from which the circumstances are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.”[16]

As aptly demonstrated on appeal by the Office of the Solicitor General, the People succeeded to establish the following circumstances:

- “1. Appellant was the Head of the Billing and Payroll Section from 1997 to 1999;
- 2. As Head of the Billing and Payroll Section, appellant was tasked to make the payroll for the workers deployed by OMS, a covering letter instructing Metrobank Boni Avenue Branch to deduct a certain amount from OMS Savings in a bank deposit and a bank transmittal containing the names of the workers and the respective salaries due to them;
- 3. Nobody helped appellant in preparing the payroll and she was the one who transacted directly with Metrobank Boni Avenue Branch regarding the transmittal of salaries of the workers;
- 4. Appellant maintained a separate payroll account in Metrobank Boni Avenue Branch in Mandaluyong, which is inconsistent with the policy of OMS of paying its regular employees in cash;
- 5. Every 15th and 30th day of the month, there was an entry on her payroll account, which is equivalent to the discrepancy between the actual and the bloated payrolls;
- 6. After the external audit and investigation from 1997 to 1999, the total amount stolen from OMS amounted to P1,849,731.70.
- 7. Appellant disappeared after the lapse of her maternity leave.”[17]

Indeed, the foregoing pieces of relevant collateral facts or circumstantial evidence, taken together, constitute an unbroken chain leading to a fair and reasonable conclusion that appellant had overstated the payroll and pocketed the excess amount for her personal benefit. Therefore, even in the absence of direct evidence, there was enough circumstantial evidence adduced by the prosecution to uphold her conviction.

Based on the foregoing discourse, and inasmuch as the computation of the ultimate penalty[18] was in accord with law, there was no compelling reason to deviate from the discussion reached by the trial court.

WHEREFORE, premises considered, the APPEAL is hereby DENIED for lack of merit. Thus, the Decision dated February 9, 2011 of the Regional Trial Court, Branch 211, Mandaluyong City in Criminal Case No. MC00-3045, is hereby AFFIRMED.

SO ORDERED.

Reyes, Jr., J.C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015 effective February 2, 2015.

[1] 3 Aquino, The Revised Penal Code, 2008 Edition, page 226 – “Grave abuse of confidence does not produce the crime of theft as an effect. It is the asportation, with intent to gain, of personal property belonging to another without the owner’s knowledge and consent, which produces it...”

[2] Rendered by Judge Ofelia L. Calo, Record Vol. III, pp. 1009-1019.

[3] Amended Information, Record, p. 182.

[4] Certificate of Arraignment, Record, p. 188.

[5] Order dated May 13, 2002, Record, p. 189.

[6] Letter dated February 8, 2000, Record Volume I, page 303.

[7] Decision, pp. 7-8, 3 Record, pp. 1015-1016.

[8] Rendered by Judge Ofelia L. Calo, Record Vol. III, pp 1009-1019.

[9] Motion for Reconsideration dated April 4, 2011 filed on April 12, 2011, Record Vol. III, pp. 1027-1035.

[10] Record Vol. III, pp. 1054-1056.

[11] Rollo, page 39.

[12] 3 Aquino, Vide, page 196.

[13] Pideli v. People, G.R. No. 163437, February 13, 2008.

[14] People v. Bustinera, G.R. No. 148233, June 8, 2004, 431 SCRA 284.

[15] Decision, page 9, 3 Record, page 1017.

[16] People v. Castro, G.R. No. 170415, September 19, 2008, 566 SCRA 92.

[17] See page 14 and 15 of Brief for the Appellee, Rollo, pp. 115-116.

[18] Decision, page 10, 3 Record, page 1018.

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