

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUNE BANZUELA Y AUSTRIA, ACCUSED-APPELLANT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before Us is an appeal from the Decision[1] of the Regional Trial Court, Branch 30, Manila dated March 10, 2000 finding the accused-appellant June Banzuela y Austria guilty beyond reasonable doubt of the crime of qualified theft, the decretal portion of which reads:

“WHEREFORE, in view of the foregoing, the Court finds the accused JUNE BANZUELA y AUSTRIA guilty beyond reasonable doubt of the offense of qualified theft and hereby sentences him to suffer the indeterminate penalty of TWELVE (12) YEARS, TWO (2) MONTHS and ONE (1) DAY as minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY as maximum, both of reclusion temporal with all the accessory penalties provided by law, and to indemnify private complainant China Banking Corporation the sum of One Hundred Twenty Five Thousand Seven Hundred Forty-Four & 44/100 (125,744.44) Pesos, Philippine Currency, with 12% annual interest counted from the filing of the Information on 20 September 1995 until fully paid, with costs against the accused.

SO ORDERED.”

The facts as culled from the records:

Accused-appellant June Banzuela y Austria (“Banzuela”) was charged with the crime of qualified theft under the following Information[2], the accusatory portion of which states:

“That on or about April 28, 1995, in the city of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, to wit: by crediting to the ATM account of his wife ROSARIO BANZUELA No. 111-042991-0 a non-existing Planters Development Bank, Orani Branch Check No. 13579 in the amount of P125,744.44 and thereafter withdrawing the said amount in increment covering the period from May 2, 1995 to June 22, 1995 thru the ATM account of his wife, take, steal and carry away the aforesaid amount of P125,744.44, belonging to the CHINA BANKING CORPORATION (Masangkay Branch) located at Masagana Bldg., Masangkay St., Binondo, this City represented by its Branch Manager, PATRICK CHUA y GO, to the damage and prejudice of said owner in the aforesaid amount of P125,744.44, Philippine Currency.

That in the commission of said offense the said accused acted with grave abuse of confidence as he was then employed as Senior Accounting Assistant of said bank, and as such, he was entrusted with the custody of the cash stolen.

Contrary to law. “

Assisted by counsel, Banzuela entered a plea of not guilty during the arraignment.[3] Trial on the merits ensued. The prosecution presented the testimonies of SPO4 Rosalio D. Mino, Jr., Investigator, Criminal Investigation Unit, Philippine National Police; Patrick G. Chua, Branch Manager; Amelia S. Amparado, Senior Manager; and

Johnson Choi, Branch Operations Head.

Banzuela was employed as a Senior Accounting Assistant in Masangkay Branch, Binondo, Manila of the China Banking Corporation (CBC). On September 14, 1995, at around six o'clock in the evening, after a phone conversation with a lawyer in the legal department of CBC, Patrick Chua requested the guard to inform Banzuela to proceed to his office. Chua wanted to ask Banzuela about clearing operation, but Banzuela cut him short and told him that he has a problem. Banzuela told Chua that he is taking funds from the bank, placing the bank funds to his account and the account of his wife, without any authority from the bank. Chua asked Banzuela if he is willing to write down what he had just revealed. Banzuela agreed, got a piece of paper and voluntarily wrote down what he had confessed.[4] The handwritten confession[5] dated September 14, 1995 reads:

“MR. PATRICK G. CHUA
SENIOR MANAGER
CHINA BANK, MASANGKAY BR.

DEAR SIR,

THAT I, JUNE A. BANZUELA A SENIOR ACCOUNTING ASSISTANT TAKING MONEY TO THE BRANCH THRU INCOME BY CREDITING TO MY WIFE ACCOUNT 111-042991-0 WITHOUT HER KNOWLEDGE. AND AT THE SAME TIME, WITHDRAW THRU ATM THE SAID AMOUNT OR BY TRANSFER TO MY SAVINGS ACCOUNT # 111-021581-0. AND ALSO I'M TAKING SHABU HERE AT THE OFFICE. ALL THE MONEY THAT I'M TAKEN WAS SPENT TO SHABU & BEERHOUSE. IT'S YOUR DECISION SIR WHAT ARE YOU GOING TO DO TO ME. SORRY SIR.

SGD. JUNE A. BANZUELA”[6]

Chua reported the irregularity to the WPDC General Assignment Section, UN Avenue where he executed a sworn statement[7]. A crime report[8] and booking sheet[9] were prepared.

The following day, Amelia Amparado, Deputy Senior Manager for Branch Auditing of CBC, went to its Masangkay Branch upon instruction of her Head to conduct an investigation on certain anomalous transactions made by Banzuela. In her investigation, Amparado found out that on April 28, 1995, Banzuela presented a deposit slip[10] wherein he made it appear that he was depositing Planters Development Bank, Orani Branch, Check No. 13879 in the amount of P125, 744.44 to his wife's (Rosario Banzuela) ATM Account No. 111-042991-0 with CBC. However, the said check was not attached to the deposit slip when presented to the teller, as further shown in the blocksheet[11]. The amount of P125, 744.44 was credited to the account of Banzuela's wife by posting it out of trust by the teller since Banzuela is her superior and who represented to her the said check was under process for forwarding to the Central Bank for clearing, which was under the control of Banzuela.

The amount of P125, 744.44 represent the income of the bank from the loan of CBC's clients. The said amount was reflected in the Statement of Account[12] dated “04-28-95” of Banzuela's wife, which he withdrew on several occasions through the ATM.[13]

After the prosecution rested its case, Banzuela filed a motion for leave to file demurrer to evidence. The RTC denied the motion in the Order[14] of July 5, 1999. This notwithstanding, Banzuela filed its Demurrer to Evidence[15] praying that the case be dismissed for lack of evidence to prove that the crime of qualified theft was committed.

In a Decision dated March 10, 2000, the RTC convicted accused-appellant June Banzuela of the crime of qualified theft.

Hence, this appeal. Banzuela argues before Us that:

-I-

THE COURT A QUO ERRED IN FINDING THAT THE ACCUSED AS ACCOUNTING ASSISTANT IN CHARGED OF BOOKING THE INCOME OF THE BANK, MANIPULATED AND CONVERTED THE INCOME INTO A DEPOSIT IN HIS WIFE'S

ACCOUNT.-II-

THE COURT A QUO ERRED IN FINDING THAT THE ACCUSED MANIPULATED THE BANK'S PROCEDURE TO CONCEAL HIS CONVERSION OF THE INCOME OF THE BANK INTO A DEPOSIT TO HIS WIFE'S ACCOUNT.

-III-

THE COURT A QUO ERRED IN FINDING THAT THE ACCUSED ON SEVERAL OCCASSIONS (SIC) WITHDREW FROM THE ACCOUNT OF HIS WIFE.

-IV-

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE AUDITING MANAGER AMELIA AMPARADO AND JOHNSON CHOI.

-IV-

THE COURT A QUO ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN ALL THE ELEMENTS OF QUALIFIED THEFT.

Accused-appellant Banzuela contends that the prosecution failed to prove any single element of the crime of qualified theft. No clear and convincing evidence was presented to show that the income of the bank was manipulated and converted by Banzuela to his wife's account, considering the internal control system of the bank. Further, accused-appellant argues that the testimonies of Amparado and Choi are hearsay since they have no personal knowledge on the preparation and due execution of the documents presented.

We find no merit in this appeal.

After a careful and thorough examination of the testimonial and documentary evidence adduced by the prosecution, We are convinced that the strength of the prosecution's evidence sufficiently established the guilt of the accused-appellant beyond reasonable doubt.

The elements of qualified theft include the elements of theft and any of the circumstances enumerated in Article 310 of the Revised Penal Code (RPC). The specific qualifying circumstance mentioned in Article 310, RPC that was indicated in the Information was that the crime was committed with grave abuse of confidence. Hence, to warrant a conviction, the prosecution should prove the following elements:

- Taking of personal property.
- That the said property belongs to another.
- That the said taking be done with intent to gain
- That it be done without the owner's consent.
- That it be accomplished without the use of violence or intimidation against persons, nor force upon things.
- That it be done with grave abuse of confidence.

There is no issue that the money taken by the accused-appellant, without authority and consent, belongs to the bank. The crime was accomplished without the use of violence or intimidation against persons, nor force upon things. What the accused-appellant questions is how the unlawful taking was committed. How was he able to manipulate and convert the income of the bank to his wife's account, considering the internal control system of

the bank, he, being just a mere senior accounting assistant.

The documentary exhibits presented in the course of the trial, which is the best evidence in proving the unlawful taking, clearly and sufficiently established how the accused-appellant committed the crime. It was shown that the accused-appellant fraudulently caused the crediting of P125, 744.44 to his wife's account. On April 28, 1995, accused-appellant presented a deposit slip (Exhibit "E") to the bank's teller, making it appear that he was depositing Planters Development Bank (PDB), Orani Branch, Check No. 13879 in the amount of P125, 744.44 to his wife's ATM Account No. 111-042991-0 with CBC. However, the blocksheet (Exhibit "F" and "G") of the bank discloses that there was no check at all. The blocksheet shows that indeed the supposed check deposit was not sent to the Central Bank for clearing. As proof that the amount of P125, 744.44 was credited to the savings account of accused-appellant's wife, the prosecution presented the Statement of Account of CBC dated April 28, 1995 in the name of Rosario Banzuela (Exhibit "H") where it can be clearly confirmed therein that a local check deposit (Exhibit "H-3") in the amount of P125, 744.44 (Exhibit "H-1") was credited to said account. The figure and the date in the said statement of account matches that of the face value of the check deposit made by the accused-appellant.

The existence or identity of the stolen money was adequately established. It was found out that the amount of P125, 744.44 represent the income of the bank from its client's loans. As shown by the evidence, said amount pertains to the discrepancy or shortage as computed from the credit and debit in the blocksheet of CBC on that particular day of April 28, 1995. In the Blocksheets: CREDITS, Accounting Department (Exhibits "G" to "G-2"), the total check deposits transacted on April 28, 1995 was P5,762,394.09 (Exhibit "G-2"), while in the Blocksheets: DEBITS, Accounting department (Exhibits "F" to "F-3"), the total amount of the checks deposits sent for clearing to the Central Bank on April 28, 1995 was only P5,636,649.65 (Exhibit "F-1"). Hence, there was a discrepancy or shortage of P125, 744.44, which is the same amount as that deposited and credited to the accused-appellant wife's savings account.

To further elucidate how accused-appellant unlawfully maneuvered the transfer of bank funds to his wife's account, the testimony of Amparado is worthy to quote herein. She explained:

"xxx

Q: During the last hearing, Miss Witness, you also testified that the total credit appearing on the black sheet (sic) was P5,762,394.09 which was encircled and marked as Exh.. "G-2", is that correct?

A: Yes, sir.

Q: You also testified that the total debit as shown in the same black sheet (sic) marked as Exh. "F" was P5,636,649.65 which was encircled and marked as Exh. "F-1", is that correct?

A: Yes, sir.

Q: You also pointed out that these two total amounts of the debits and the credits marked as Exh. F-1 and G-2 respectively had discrepancy in the total amount of P125,744.44, is that correct?

A: Yes, sir.

Q: You also testified that this discrepancy in the amount of P125,744.44 actually represents the amount of the checks that was credited in the account of the wife of the accused, which in truth, said check was not actually existing, is that correct?

A: Yes, sir.

Q: In other words, you are saying during your testimony that the total debit do (sic) not actually tally with each

other?

A: Yes, sir.

Q: Why should the debit and the credit transaction you mentioned shown in the same account?

A: That there was really a check deposit and that credited to the account of the depositor.

Q: So, since there was a discrepancy, how did the accused if you know, how did the accused make it appear that there is a balance in the record?

A: He substituted the credit transaction to the account of the wife of the accused.

Q: This income that should have been credited in favor of the bank, where was this income derived?

A: From the income collected to the buyer Felix Medina and Michealle Renee Corp.

Q: How did the accused as you stated get this income from interest and loan?

A: He substituted interests, of crediting the income with the bank, he substituted with another credit and with was deposited to the account of the other.

Q: How did he perform the substitution, if you know?

A: The accused happened to be our accounting clerk. He was able to facilitate it because he was the accounting who is in charge of booking the income and it was very easy for him to make the substitution of the income to be credited to the account of the wife of the accused.

Q: And do you have proof to that?

A: The ticket entry, sir.

Q: And do you have that ticket entry that you mentioned?

A: On that particular date, we have a debit entry and discounting for a total of P125,744.44 and it represents here a credit entry but in the black sheet (sic), there was no showing of ticket entry.

xxx

(TSN, May 20, 1997, pp. 4-5).

Given the foregoing, it cannot be gainsaid that accused-appellant was able to unlawfully take possession of the money of the bank. It is immaterial whether he was able to withdraw the same on several occasions. Well-settled is the rule that in theft, taking is considered complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.[16] Thus, the moment that the money was credited to the savings account of accused-appellant's wife, the unlawful taking is complete even if he has not made any withdrawal of the money. Likewise, intent to gain, or animus lucrandi, is an internal act, hence, presumed from the unlawful taking of things.[17]

Moreover, the handwritten confession (Exhibit "D") of the accused-appellant is entitled to great weight as evidence against him. This visibly demonstrates the categorical acknowledgment of his guilt. A confession constitutes evidence of high order since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and his conscience. It is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat, or promise of reward or leniency.[18]

It should be noted that the rights enshrined in Sec. 12, Article III of the constitution may be invoked only when a person is under “custodial investigation” or “in custody investigation”.[19] In this case, accused-appellant was not even under administrative investigation when he made the confession. In fact, it was merely a casual conversation between him and the Branch Manager. The voluntariness and spontaneity of his confession is revealed by the fact that it was the accused-appellant himself who opened up the topic, confessed the wrongdoing he committed, and freely agreed to reduce the same into writing. We are not convinced by accused-appellant’s assertion that the handwritten confession was given while he was under threat or was being coerced. He failed to substantiate or adduce any evidence proving the threat or coercion. The confession contains details which could have been known only to the accused-appellant.[20] Besides, accused-appellant is an educated man who would not easily yield to any threat or intimidation of another considering the consequences of what he was asked to do.

The fact that Amelia Amparado and Johnson Choi did not personally prepare the documents will not make their testimonies hearsay. These documentary exhibits are admissible as an exception the hearsay evidence rule, these documents being entries in the ordinary or regular course of business.[21] It is said that in the presentation and admission as evidence of entries made in the regular course of business, there is no overriding necessity to bring into court all the clerks or employees who individually made the entries in a long account; it is sufficient that the person who supervises the work of the clerks or other employees making the entries testify that the account was prepared under his supervision and that the entries were regularly entered in the ordinary course of business.[22] It was Reynaldo Mayor who prepared the blocksheets, however, he is no longer connected with CBC.[23] It should be pointed out that Johnson Choi is the Branch Operations Head of CBC, the immediate superior of Mayor and the accused-appellant, and who supervises their work. Hence, when he testified on the basis of the documentary exhibits, these exhibits being entries in the regular and ordinary course of business, his testimony is not hearsay.

On the other hand, Amelia Amparado, as Auditor of the CBC, reviews the results of the audit and conducts investigations of anomalous cases.[24] Hence, when she testified in the witness stand, she was stating the results of the examination and investigation she conducted on the basis of the bank documents which she personally retrieved from the bank files. The authenticity and due execution of these documents have not been rebutted by accused-appellant. Thus, contrary to accused-appellant’s contention, her testimony is not an opinion. Amparado was made to testify because of her competence as Auditor of the bank, knowledgeable in analyzing and reviewing the results of the documents containing entries made in the ordinary course of business.

We find, however, that accused-appellant is only liable for the crime of simple theft. The grave abuse of confidence stated in the last paragraph of the Information is not proven. As Senior Accounting Assistant, accused-appellant has no custody of the cash money stolen. Although accused-appellant had taken advantage of his position, he did not act with grave abuse of confidence because Chinabank has never given him custody of cash money, nor allowed him to take hold of said cash money.

Having proven all the elements of simple theft, the conviction of accused-appellant is inevitable. His guilt has been proved beyond reasonable doubt. Considering therefore that he is only liable for simple theft, a modification of the penalty imposed by the RTC is in order. Under Article 309(1), RPC, the penalty for simple theft is –

“The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be. xxx”

In this case, the total amount of money stolen is P125, 744.44. Based on the above quoted paragraph, since the value stolen exceeds 22,000 pesos, the basic penalty is prision mayor in its minimum and medium periods to be imposed in the maximum period, which is 8 years, 8 months and 1 day to 10 years of prision mayor.

To determine the additional years of imprisonment, We deduct P22, 000.00 from P125, 744.44, which gives us P103, 744.44, and which should thereafter be divided by P10, 000.00, disregarding any amount less than P10, 000.00. The end result is that ten (10) years should be added to the basic penalty, which gives Us, 18 years, 8 months and 1 day of reclusion temporal.

Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be anywhere within the range of the penalty next lower in degree to that prescribed for the offense, without first considering any modifying circumstance attendant to the commission of the crime.[25] The fact that the amount involved in this case exceeds P22, 000.00 should not be considered in the initial determination of the indeterminate penalty, but this should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence.[26] Since the basic penalty prescribed by law for simple theft against accused-appellant is prision mayor in its minimum and medium periods to be imposed in the maximum period, the penalty next lower would then be prision correccional in its medium and maximum periods to be imposed in its maximum period, or 4 years, 9 months and 11 days.

WHEREFORE, premises considered, the instant appeal is DISMISSED. The assailed Decision of the Regional Trial Court, Branch 30 of Manila dated March 10, 2000 is AFFIRMED, with MODIFICATION that herein accused-appellant June Banzuela y Austria is found guilty beyond reasonable doubt of the crime of SIMPLE THEFT and is hereby sentenced to suffer the indeterminate penalty of 4 years, 9 months and 11 days of prision correccional, as minimum, to 18 years, 8 months and 1 day of reclusion temporal, as maximum. The decision of the trial court is affirmed in all other respects.

SO ORDERED.

Dacudao, (Chairman) and Arevalo-Zenarosa, JJ., concur.

[1] Rollo, pp. 21-24; Records, pp. 288- 291.

[2] Records, p. 1.

[3] Order dated May 9, 1996, Records, p. 70.

[4] TSN, August 7, 1996, pp. 7-10; TSN, September 18, 1996, pp. 3-4.

[5] Exhibit “D”, Records, p. 192.

[6] Exhibit “D”, Records, p. 192.

[7] Exhibit “A”, Sworn Statement of Patrick Go Chua, Records, p. 189.

[8] Exhibit “B”, Records, p. 190.

[9] Exhibit “C”, Records, p. 191.

[10] Exhibit “E”, Records, p. 193.

[11] Exhibits “F”, “G”, and “J”, Records, pp. 194-195, p. 197.

[12] Exhibit “H”.

- [13] See Exhibits “K”, “L”, and “M”. TSN, November 27, 1996, p. 9.
- [14] Records, p. 221.
- [15] Records, pp. 236-244.
- [16] *People vs. Hernandez*, 432 SCRA 104, June 15, 2004.
- [17] *Ibid*.
- [18] *People vs. Montiero*, G.R. No. 110106, July 31, 1995.
- [19] *Sebastian, Sr. vs. Garchitorena*, 343 SCRA 463, October 18, 2000.
- [20] Florenz D. Regalado, *Remedial Law Compendium*, Volume Two, Ninth Rev. Ed., 2001, p. 630.
- [21] Section 43, Rule 130, Rules of Evidence.
- [22] Regalado, *Remedial Law Compendium*, supra, citing *Yek Tong Fire and Marine Insurance Co. Inc., vs. Gutierrez, et al.*, [CA], 59 O.G. 8122).
- [23] TSN, October 21, 1997, p. 8.
- [24] TSN, November 27, 1996, pp. 4-5.
- [25] *People vs. Dela Cruz*, 326 SCRA 324 (2000).
- [26] *Ibid*, citing *People vs. Gabres*, 267 SCRA 581 (1997).

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