

PEDRO GALI, PETITIONER, VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.

G.R. No. L-36294. June 25, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These are two petitions for review filed separately by Pedro Gali and Felix Antonio of the decision of the Court of Appeals affirming their conviction by the Court of First Instance of Baguio City, for malversation of public funds. As found by the Court of Appeals, the facts established by the evidence for the prosecution are as follows:

"It appears that Pedro Gali on the date the offenses were committed was the paymaster while Felix Antonio was the acting cashier in the Office of the Treasurer of the City of Baguio. Both of them were bonded employees, Pedro Gali for P20,000.00 and P60,000.00 for Felix Antonio. Their offices, cage-like rooms, while adjacent to each other, are separately enclosed by a concrete wall three feet high from the floor and with an iron grating to the ceiling. To reach both offices, one has to open four different automatic locks and three padlocks.

"The safe used by Pedro Gali was a "Herring-Hall" type while that of Felix Antonio was "Yale" type. Both safes were quite old but never robbed before. Only the two accused knew the key combinations of their respective safes which they changed secretly when they took over their jobs. The combination numbers were sealed in separate envelopes and deposited in the City Treasurer's own safe. This was to enable the Treasurer to open their safe in the presence of witnesses should either of them abscond or could not be located.

"On January 19, 1965, the last day of paying municipal licenses, Pedro Gali reported for duty. He was able to collect P7,600.47 in cash. Later that afternoon, he paid the laborers. He did not leave his office until 6:00 o'clock in the after-noon as he waited for the collection of Manuel Collado, a teller in the City Revenue Collection Section.

"Before leaving, he placed all his papers and accounts consisting of cash money, documents, payrolls, checks, and other papers inside his safe which he later on closed by turning the combination knob. He then closed the door of his office with its two padlocks. On his way to the Administrative Division to punch his card, he met Graciano Esquejo at the hallway. He proceeded home with his 13-year old son Romulo.

"On January 20, 1965, at around 7:30 o'clock in the morning, Pedro Gali went to his office. Upon opening his safe, he found that the contents thereof were disturbed and the government money therein kept lost. As the City Treasurer was in Manila at the time, he went to see the Assistant Treasurer to report the matter and the Assistant Treasurer referred the case to the City Police for investigation.

"That same morning, the City Auditor found the accountability of Pedro Gali short of P7,209.79. While it was routine for the City Auditor to check funds of public officers in the City Hall every afternoon, Pedro Gali's collection was last audited on January 13, 1965, because he was out every after-noon from that date paying laborers and employees working elsewhere. However, he kept the daily record of his collections and disbursements during the period which, on paper, showed that as of January 19, 1965, before the discovery of the loss, there was in his safe P7,209.79 in cash. His reports were submitted and confirmed to be correct

(Exhibits 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40).

"On January 25, 1965, the City Treasurer wrote Pedro Gali a letter demanding that the amount of his shortage be restituted within 72 hours from receipt of said letter, otherwise the case would be referred to the City Fiscal for the filing of the proper criminal action against him. (Exhibit C).

"On January 26, 1965, Pedro Gali answered the City Treasurer's letter of demand informing the latter that he could not restate the amount of P7,209.79 because said amount was lost without his knowledge and responsibility (Exhibit 10).

"In the case of Felix Antonio, he also reported for work on January 19, 1965. At about 4:00 o'clock that afternoon, he prepared his cash report for the day (Exhibit 2) and his spot cash was audited until 5:00 o'clock that same afternoon by M. Diaz, representative of the City Auditor. His cash balance for that day in the amount of P10,389.90 was found and verified correct (Exhibit 2-A). That same afternoon, Mr. Macam and Mrs. Peralta, who were both paymasters holding office inside that of Felix Antonio left at about 5:00 o'clock ahead of the latter.

"Felix Antonio locked his safe, twisted the combination knob, closed the office door and the outer door both of which locked automatically. He kept the keys but Mr. Macam and Mrs. Peralta held duplicate ones to the said doors. When he was about to leave, he was invited by the Assistant Treasurer to play bowl-ing. Together they passed the Collection Division door which was still opened, crossed the main alley of the City Hall to the Administrative Office where Felix Antonio punched his card out at 5:15 that afternoon.

"On the following morning of January 20, 1965, when Felix Antonio reported for work, he found, upon opening his safe, the bundled mutilated paper bills ready for shipment to the Central Bank for condemnation gone and the other contents of said safe shuffled. The matter was reported to the City Police for investigation. When the City Auditor audited the accountability of Felix Antonio that morning, it was found out that the same was short in the amount of P8,642.55.

"On January 25, 1965, the City Treasurer wrote Felix Antonio a letter demanding that the amount of his shortage be refunded within 72 hours from receipt of the aforesaid letter, otherwise the case would be referred to the City Fiscal for the filing of the proper criminal action against him (Exhibit D).

"On January 27, 1965, Felix Antonio answered the letter of the City Treasurer with regrets saying that he could not make the restitution demanded of him because the amount of P8,642.55 is not his short-age for the reason that his safe where the money was kept on January 19, 1965, was robbed and that he was not the perpetrator thereof (Exhibit 11)."[1]

The only issue raised is whether from the facts as established by the evidence for the defense, the legal presumption of misappropriation of public funds, as laid down in the last paragraph of Article 217 of the Revised Penal Code has been overcome. The legal provision adverted to reads as follows:

"The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses. (As amended by Rep. Act No. 1060)."

In trying to overcome the presumption against them, petitioners pointed to a security guard of the Treasury Department, Benito Benito, and one Rogelio Roxas, a locksmith expert, as the probable culprits in the stealing of the money from the locked safes under the charge of said petitioners where the money were kept, which could be reached by also opening with false keys or picklocks the padlocks of the door or entrance to the cage-like rooms in which the petitioners held office. As the Court of Appeals itself observed in its decision:

"Accused-appellant Pedro Gali's only defense is that at one time or another he also lost his pistol and some

money kept in his office. However, he now joins in invoking accused-appellant Felix Antonio's defense, which the latter reiterates in this appeal - that the loss of the money in their respective safes could have been caused by robbery perpetrated by Benito Benito, the treasury security guard, in connivance with Rogelio Roxas, an alleged locksmith expert. Said suspicion is grounded on the circumstances that the two, Benito Benito and Rogelio Roxas, were often seen playing dama outside the door of the Collection Division during Saturdays and Sundays whenever Benito Benito was on duty; that Rogelio Roxas, when there were persons transacting business with employees through the cage windows, occasionally walked along the corridor from where he probably saw accused-appellant Felix Antonio open his cage; that two weeks after the loss, Benito Benito was seen with a transistor radio and, together with Rogelio Roxas, went to a nightclub; that the door to the Collection Division has an automatic lock and padlock the keys to which were kept by Janitor Democrito Monsalud who, when some employees keep on working after 5:00 P.M., used to give before going home said keys to whosoever was on guard duty; that the keys were given by Democrito Monsalud to Benito Benito that afternoon of January 19, 1965, because Graciano Esquejo was still working there; that Benito Benito's guard duty that afternoon was from 5:00 P.M. to 12:00 midnight to be followed by another guard, Amado Aspiras, from 12:00 midnight to 8:00 o'clock the next morning; that Amado Aspiras arrived ten minutes late; and that Benito Benito left fifteen minutes before his time because of hunger."[2]

From its own assessment of the evidence of the defense as set forth above, the Court of Appeals concluded that the petitioners have not overcome the legal presumption against them, saying:

"Evidently, the accused-appellants have not given a satisfactory account of the loss of the funds from their respective safes. They merely suspected other persons to have stolen the funds. No evidence, whether direct or circumstantial, to establish robbery was ever adduced by them. Consequently, they cannot be exonerated (U.S. vs. Kalingo, 46 Phil. 651)."[3]

We are not convinced. The evidence of the petitioner shows enough circumstance to establish the probability of theft or robbery as the cause of the loss of the money involved in the case; that is, that the petitioners are absolutely without culpability in the disappearance thereof, and may not be held criminally liable therefor.

The petitioners herein have their own separate responsibilities, and are equipped with the means with which to comply with them with utmost fidelity, including the posting of bonds. There is absolutely no showing, nor does the possibility ever suggest itself, that both petitioners agreed between themselves to commit the crime imputed to them at the same time, and make it appear falsely that robbery was committed to cover up their offense also at the same time. This circumstance, which was obviously overlooked by both the trial and the appellate courts, coupled with the other circumstances already indicated by the Court of Appeals in the above-quoted portion of its decision relative to the defense put up by petitioners, suffice to make the mind uneasy as to their guilt, notwithstanding the prima facie evidence established by law against them, which by no means dispenses with the need of proving guilt beyond reasonable doubt.

The reaction of petitioners on sight of the disarrayed condition of their respective safes was as naturally to be expected of them in their honest belief that the money under their accountability was taken under circumstances of either theft or robbery. They instantly reported the matter first to their superior, thence to the police authorities. They named the culprits as the persons who furnished sufficient ground to invite suspicion against them. Benito Benito was the security guard on duty at such hour that could lend facility to the execution of the plan, evidently carried out with the help of Rogelio Roxas, as an ally, shown to be an expert lock-smith and a close friend of Benito. According to petitioner, Felix Antonio, who was a neighbor of Benito, the latter and Roxas were seen using a scooter bought by Roxas in going to nightclubs. Benito had changed in his manner of dressing, wearing coat and tie as he never did before, and also expensive sweaters, jackets, and sunglasses. Practically, everyone in Benito's family had a transistor radio. Before the incident, both Benito and Roxas did not have any of these possessions.[4]

The foregoing facts were not mentioned in the decision of the Court of Appeals, nor the fact that sometime before mid-night of January 19, 1961, Benito went to the "Terrace Bar" and played host to some Baguio City Policemen, paying the bill (Exhibit 16). What was mentioned is only Benito's having a transistor radio, and together with Roxas, was seen going to a nightclub. Neither was it mentioned that Benito exchanged tour of guard duty with another guard, Amado Aspiras, only on January 19, 1965, so that he was on duty from 5:00 to 12:00 midnight, instead of from 12:00 midnight to 8:00 o'clock in the morning, as was his regular tour of duty, and he left 15 minutes earlier before his relief arrived to take over at 12:00 midnight of January 19, 1965, and that aside from playing host to policemen in an eating and drinking spree, he gambled with policemen at the City Hall and lost (Exhs. 12 and 16). Of no little significance is the undisputed fact that when Benito was also on guard duty on May 4, 1964, the revolver and money of petitioner Gali which he kept in his cage, were lost. The loss was duly reported to the police authorities with other cases of similar incidents (Annex "A", p. 54, Rollo, L-36294).

The respondent court made much of there being no signs of breaking or force used in opening the safes, implying that they were never forcibly opened as they would have been, if person other than petitioners who alone knew the combination of their respective safes opened them. But again, respondent court made no mention of the evidence of the defense showing, by actual demonstration, how easily locks may be opened in a matter of few minutes with false keys or picklocks; and with some more minutes to do so, safes could also be opened by locksmith experts even without previous knowledge of the safe's combination. It is also pertinent to mention here that the open padlock to the Collection Division door was left with Benito by the janitor Monsalud when the latter left earlier that afternoon, with some employees, including petitioner Gali, still inside their office. Access to the safes was thus facilitated with Benito as the only one in a position to make it so, on the very night of the alleged incident.

In the brief of the Government, no refutation was made of the foregoing facts as proven by the defense and set forth in petitioners' briefs. All the State counsels said is that the "unsubstantiated pretext that the robbery was perpetrated by Benito Benito and Rogelio Roxas has not been proven and established at all," and that no NBI or police report was presented (p. 18, Appellee's Brief). This is not quite true. The evidence discloses that both the NBI and the police were notified of the incident with request for investigation by no less than the City Treasurer, but apparently no action was taken. Neither does it appear that Benito Benito and Rogelio Roxas were presented, as they should have been, to rebut or deny the serious imputation of robbery having been committed by them through the testimony of herein petitioners, particularly Felix Antonio.

The extreme improbability, absent any evidence to show otherwise, of the two petitioners coming to an agreement to commit the crime imputed to them, and the simultaneousness with which the robbery, as alleged, was committed under similar circumstances in their separate cage-like rooms, are strong considerations that would seriously impair the basis upon which is founded the legal presumption of personal misappropriation of money or property of accountable officers who fail to have forthcoming, such money or property when so demanded by a duly authorized official. In this case, the audit or examination was precisely prompted by the report of petitioners themselves, as accountable officers, of robbery or theft having been evidently committed, resulting in the loss of money under their accountability.

If strictly construed, as penal provisions should be,^[5] the legal presumption in Article 217 of the Revised Penal Code comes into application only when in the ordinary course of examination, there being no previous report of loss through suspicious acts ascribed to third person or persons, shortage is discovered, and a demand to make good the shortage is made but not complied with. The circumstances in the instant case are quite different as already demonstrated, the loss of the money having been reported before the cash examination, not after, and the cause of the loss as reported having a distinct ring of truth and reality, not a mere "figment of the imagination," nor a tell-tale story "loose and altogether easy to concoct," as the state counsels describe the theory of the defense.

And with the evidence presented by the petitioners standing un rebutted, We are satisfied that the legal presumption should not be made to support conviction,[6] as was the only basis of the lower court's finding of guilt against petitioners.

WHEREFORE, the judgment appealed from is hereby reversed and petitioners acquitted, with cost de oficio.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
Teehankee, (Chairman), J., files a separate opinion.

[1] pp. 3-8, Decision of the Court of Appeals, pp. 23-28, Rollo, G.R. No. L-36294.

[2] pp. 8-9, Decision of the Court of Appeals, pp. 28-29, Rollo, G.R. No. L-36294.

[3] pp. 9-10, Decision of the Court of Appeals, pp. 29-30, Rollo.

[4] pp. 161-163, t.s.n., February 21, 1966.

[5] U.S. v. Abad Santos, 36 Phil. 243; People v. Elkanish, 90 Phil. 53; People v. Yu Hai, 99 Phil. 725.

[6] U.S. v. Acebedo, 18 Phil. 428; U.S. v. Catolico, 18 Phil. 504; U.S. v. Francisco, 35 Phil. 248.

CONCURRING OPINION TEEHANKEE, J.:

I concur and would add the comment that it is strange that no action was taken by the NBI and the Baguio Police on the robberies, notwithstanding the City Treasurer's request for investigation, and that the suspects pointed to by the accused-appellants herein acquitted, namely, Benito Benito and Rogelio Roxas, do not appear to have been investigated at all by the police authorities.

ACCORDINGLY, the Division Clerk of Court is directed to furnish a copy of this decision to the Minister of Justice for the investigation and prosecution of those persons responsible for the robberies.

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