

LITO C. MARCELO, PETITIONER, VS. THE HON. SANDIGANBAYAN (FIRST DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 109242. January 26, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari filed by Lito Marcelo from a decision of the Sandiganbayan (First Division)[1] convicting him and two others of qualified theft. The information against them alleges —

That on or about February 17, 1989, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused, ARNOLD PASICOLAN, a public officer, being then an Emergency Laborer assigned as bag opener at the printed matters section of Makati Central Post Office, and taking advantage of his official position by having access to the mail matters in conspiracy with accused RONNIE S. ROMERO and LITO MARCELO, both private individuals, did then and there wilfully, unlawfully and feloniously with grave abuse of confidence, and with intent of gain and without the consent of the owners thereof, take, steal and carry away from the Central Post office of Makati one bag containing assorted mail matters some of them containing U.S. Dollar Bills in the aggregate amount of \$500, or its peso equivalent in the amount of P11,000.00, Philippine Currency, to the damage and prejudice of the different addressee (sic) or the government in the aforesaid mentioned (sic) amount.

CONTRARY TO LAW.

The facts established during the trial show the following:

On February 10, 1989, Jacinto Merete, a letter carrier in the Makati Central Post Office, disclosed to his chief, Projecto Tumagan, the existence of a group responsible for the pilferage of mail matter in the post office.[2] Among those mentioned by Merete were Arnold Pasicolan, an emergency laborer assigned as a bag opener in the Printed Matters Section, and Redentor Aguinaldo, a mail sorter of the Makati Post Office. Merete likewise described the modus operandi of the group.

For this reason, Tumagan sought the aid of the National Bureau of Investigation (NBI) in apprehending the group responsible for mail pilferage in the Makati Post Office.

On February 17, 1989, NBI Director Salvador Ranin dispatched NBI agents to Legaspi Village following a report that the group would stage a theft of mail matter on that day. Tumagan accompanied a team of NBI agents composed of Senior Agent Arles Vela and two other agents in a private car. They arrived at Legaspi Village at about 1:00 p.m. They stayed at the corner of Adelantado and Gamboa Streets, while two other teams of NBI agents waited at Amorsolo Street, near the Esguerra Building.[3]

At 2:00 p.m., a postal delivery jeep, driven by one Henry Orindai, was parked in front of the Esguerra Building on Adelantado Street.[4] Esguerra Building is located between Adelantado and Amorsolo Streets. Adelantado and

Amorsolo Streets are parallel to each other. The passengers of the postal delivery jeep were Arnold Pasicolan, Jacinto Merete, and the driver, Henry Orindai.[5] Pasicolan alighted from the jeep bringing with him a mail bag. Merete stayed inside the jeep. Pasicolan then passed through an alley between Esguerra and Montepino Buildings going towards Amorsolo St.[6] Montepino Building is adjacent to Esguerra Building. The two are separated by the alley. Upon reaching Amorsolo St., Pasicolan gave the mail bag to two persons, who were later identified as Ronnie Romero and petitioner Lito Marcelo. The latter transferred the contents of the mail bag (i.e., assorted mail matter) to a travelling bag. The two then secured the bag to the back of their motorcycle.[7]

Meanwhile, the NBI team led by agent Vela, upon seeing Pasicolan going towards Amorsolo St., moved their car and started towards Amorsolo St. They were just in time to see Pasicolan handing over the mail bag to Marcelo and Romero.[8] At that point, Atty. Sacaguing and Arles Vela arrested the two accused.

Unaware of the arrest of Romero and Marcelo, Pasicolan went back to the postal delivery jeep and proceeded toward Pasay Road. The NBI agents followed the postal delivery jeep, overtook it, and arrested Pasicolan.[9]

The NBI agents brought Pasicolan, Marcelo, and Romero to their headquarters. They also brought along with them the motorcycle of Romero and Marcelo and the bag of unsorted mail found in their possession.[10] On their way to the NBI headquarters, they passed by the Makati Central Post Office, intending to arrest another suspect, Redentor Aguinaldo. However, they were not able to find him there.[11]

The unsorted mail seized from Marcelo and Romero consisted of 622 letters.[12] The names of the addressees were listed. They were subsequently notified by the Bureau of Posts to claim their letters. Many of them, after proper identification, were able to claim their letters. Some letters contained money.

Romero, Marcelo, and Pasicolan were asked to affix their signatures on the envelopes of the letters. They did so in the presence of the members of the NBI Administrative and Investigative Staff and the people transacting business with the NBI at that time. According to Director Ranin, they required the accused to do this in order to identify the letters as the very same letters confiscated from them.[13]

NBI Director Ranin allegedly saw US dollar bills in various denominations of 20, 50, and 100 dollars.[14] Vela and the other NBI agents stated in their affidavits that there were dollar bills in the letters which, if converted to Philippine pesos, at the then exchange rate of P22 to US \$1, were worth P11,000.00.[15] The addressees agreed to leave the envelopes of the letters with the NBI. Those letters which were not claimed were opened in court in the presence of the counsel for the defense. The letters were found to contain three (3) one dollar bills, one (1) five dollar bill, one (1) twenty dollar bill, a check for twenty-five dollars, and fifty (50) Saudi Arabian riyals.[16]

Arnold Pasicolan, Ronnie Romero, and herein petitioner Lito Marcelo were charged with infidelity in the custody of documents. The case was later withdrawn and another information for qualified theft was filed before the Sandiganbayan.

On March 8, 1993, the Sandiganbayan found all the accused guilty beyond reasonable doubt as principals of the crime of qualified theft. The dispositive portion of its decision reads:

WHEREFORE, the Court finds the three accused, Arnold Pasicolan y Mabazza, Ronnie Romero y Santos, and Lito Mercado [should be Marcelo] y Cruz, guilty, as principals, beyond reasonable doubt of the crime of qualified theft defined in Article 310, in conjunction with Articles 308 and 309, of the Revised Penal Code. Accordingly, applying the Indeterminate Sentence Law and considering the aggravating circumstances of taking advantage of public position, the Court imposes upon Arnold Pasicolan y Mabazza the penalty ranging from EIGHT (8) years, EIGHT (8) months, and ONE (1) day of Prison mayor, as minimum, to THIRTEEN (13) YEARS, ONE (1) month, and ELEVEN (11) days of reclusion temporal, as maximum. Applying again the Indeterminate Sentence Law and there being no aggravating nor mitigating circumstances, the Court

imposes upon Ronnie Romero y Santos and Lito Marcelo y Cruz, the penalty ranging from SEVEN (7) YEARS, four (4) months, and ONE (1) day of prision mayor, as minimum, to eleven (11) years, SIX (6) months, and TWENTY-ONE (21) days of prision mayor, as maximum.

Hence, the instant petition for review on certiorari based on the following assignment of errors:

(1)

Respondent Honorable Court had wrongly made the crucial finding against petitioner that he has committed the act charged in conspiracy with each other.

(2)

Respondent Honorable Court erred in admitting as evidence of petitioner's guilt the letters signed by the accused during custodial investigation without the assistance of counsel, in utter disregard of his constitutional right.

First. Petitioner says that since the subject of the alleged pilferage was mail matter, only a government employee may be held guilty of qualified theft unless a private individual was shown to have been in conspiracy with him. He contends that since he is not a government employee, then he cannot be charged or held guilty of the crime as there is no proof that he conspired with a postal employee. The petitioner argues that there is no evidence to prove that he was at any time in conspiracy with the members of the syndicate inside the post office. In fact, petitioner points out, Jacinto Merete, Projecto Tumagan, and his co-accused Arnold Pasicolan were one in saying that it was their first time to see him and Romero on February 17, 1989. Likewise, in the meeting allegedly conducted by the members of the syndicate, he and Romero were not around nor were their names mentioned. Petitioner says that although he and Romero knew each other, it was only on February 17, 1989 that they saw each other again in order to see a movie.

We cannot understand petitioner's theory that, as the subject of the pilferage was mail matter, only a government employee, presumably of the postal service, can be held liable of qualified theft. What makes the theft of mail matter qualified is the fact that the subject thereof is mail matter, regardless of whether the offender is a postal employee or a private individual. This much is clear from Art. 310 of the Revised Penal Code which provides:

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.

Thus, as long as the thing stolen is one of those enumerated in Art. 310, the crime is qualified theft. In this case, it is mail matter. Hence, it is not necessary that petitioner be shown to have been in conspiracy with a government employee in order to hold him liable for qualified theft.

Be that as it may, conspiracy was proven in this case. NBI agent Arles Vela testified that petitioner was instrumental in transferring the contents of the mail bag which Pasicolan handed to them to their travelling bag and that afterward petitioner and his co-accused Romero tied the bag to their motorcycle.

Vela's testimony was corroborated by Projecto Tumagan, who likewise testified that Romero and Marcelo transferred the contents of the mail bag to their bags. Although Tumagan said petitioner and Romero had two bags, thus contradicting Vela's testimony that petitioner and his co-accused had only one bag, the inconsistency in the testimonies of these two prosecution witnesses is not really of much importance. What is important is that Tumagan corroborated Vela's testimony that petitioner helped in putting the letters in their bag. The discrepancy

could be due to the fact that these two witnesses were inside a car and were at some distance from the persons they were observing. At any rate, during the cross-examination, Tumagan said that the contents of the mail bag were transferred to one “other bag” — implying that there was really just one bag involved.[17] Moreover, the defense should have confronted Tumagan with this inconsistency and asked him to explain. For its failure to do so, the defense cannot for the first time raise the point in this appeal.

Petitioner Marcelo showed no sign of surprise or hesitation when Pasicolan handed the mail bag to him and Romero. It was apparent he was acting pursuant to a prior agreement because when the mail bag was given to him, he got the bag and he and Romero then transferred its contents to their travelling bag. Petitioner acted in concert with Pasicolan and Romero, thus indicating he was in conspiracy with them. As the Sandiganbayan said:

The accused appear to have committed the acts charged in conspiracy with each other pursuant to a pre-conceived plan known to all of them to attain a common goal. Thus, when the postal delivery jeep stopped near Esguerra Building along Adelantado Street, Pasicolan alighted bringing with him a mail bag, passed through an alley beside Esguerra Building, and upon reaching Amorsolo Street handed over the mail bag to Romero and Marcelo who were waiting for him. Upon receiving the mail bag they quickly opened it and transferred its contents to a bag which Aguinaldo provided for the purpose. No words were exchanged between Pasicolan, on the other hand, and Romero and Marcelo, on the other, in effecting the delivery. Pasicolan did not ask if Romero and/or Marcelo were the person or persons sent to receive the mail bag. These facts indicate that the three accused already knew each other and were fully aware of what each had to do. And when Romero and Marcelo were arrested for receiving the mail bag, they said nothing to the NBI. Not even a whimper of protest was heard from them. They appear resigned to their fate after having been caught red-handed.

Petitioner Marcelo claimed that he and Romero met on February 17, 1989 in order to see a movie; that when Pasicolan handed four envelopes to Romero, he was across the street buying cigarettes; and that when he joined Romero, a person identifying himself as an NBI agent arrested them. Marcelo testified:[18]

ATTY. CRUZ

Q

So you were asked by Ronnie Romero if you will be reporting for work at that time?

A

Yes, sir.

JUSTICE HERMOSISIMA

Q

What time was this when you were asked by Ronnie Romero?

A

1:00 o'clock in the afternoon.

ATTY. CRUZ

Q

What was the reason why you were asked by Ronnie Romero?

A

He wanted me to go with him to see a movie.

Q

Did he tell you at what place you will see a movie?

A

No, sir.

Q

What was your reply?

A

I told him “yes, I will go with you, anyway I have to go to my work at 10:00 o’clock in the evening.”

....

Q

What happened next Mr. Marcelo?

A

Then I rode at the back of his motorcycle and we went straight to Makati. Suddenly we stopped near a building and I asked him what we will do there and he told me he was going to wait for somebody there.

....

ATTY. CRUZ

Q

What was told to you when you reached there?

WITNESS

A

He told me he had to wait for somebody there and I told him to hurry up, “I thought you said we are going to see a movie”, and he said, “this will not take long”.

Q

While at Taguig, were you informed by Ronnie Romero that you will be waiting for somebody when you reached Makati?

A

No, sir.

....

Q

And what happened next?

A

While we were there I told Ronnie Romero I had to buy cigarette from across the street and after a while, about half an hour, Ronnie called me I saw somebody handing him about four pieces of envelopes.

Q

How would you describe that envelope?

A

It was like the Manila envelope that we see being used by the elementary grades.

Q

Was there any distinguishing mark in this envelope?

A

No, sir.

Q

Were you able to see what was the contents of these envelopes?

A

No, sir.

Q

That person who handed the envelope to Ronnie, do you know him?

A

I do not know him.

Q

While that envelope was being handed to Ronnie, you mean to say you were across the street?

A

Yes, sir.

Q

And so you crossed the street to reach Ronnie?

A

Yes, sir.

Q

When you crossed the street was the envelope still being handed or already handed to Ronnie?

A

It was already handed to him.

Q

What happened next?

A

After I crossed the street somebody shouted at us identifying himself as NBI, “WE are from the NBI, do not move”.

The foregoing testimony is contrary to the testimony of Ronnie Romero. Romero said that Redentor Aguinaldo, a mail sorter, had asked him to meet a person in Makati who would give him an envelope to be delivered to an unidentified person at the BF Homes Subdivision in Parañaque. Romero’s version is as follows:[19]

ATTY. I. CRUZ:

Q And do you know a certain person by the name of Redentor Aguinaldo?

JUSTICE HERMOSISIMA:

Q

The accusation against you is that you conspired with your co-accused Arnold Pasicolan and Lito Marcelo in stealing the articles and things stated in the Information. Why do you say that you are not part of the conspiracy, what do you mean by that statement?

A Because, sir, I do not know what was the contents of the envelope.

You can proceed now.

ATTY. I. CRUZ:

Q

You mentioned of an envelope which you claim not to have known the contents of the same. Who gave you the envelope?

A Arnold Pasicolan.

Q Do you know Arnold Pasicolan prior to and/or before February 17, 1989?

....

A No, sir.

ATTY. I. CRUZ:

Q When for the first time did you come to know Arnold Pasicolan?

A On February 17, sir.

Q When, where specifically did you come to know him?

A At the NBI office, sir.

Q Now...

JUSTICE HERMOSISIMA:

Q February 17, 1989?

A Yes, Your Honor.

Proceed.

....

ATTY. I. CRUZ:

Q Do you know a certain Redentor Aguinaldo?

A Yes, sir.

JUSTICE HERMOSISIMA:

Q Tell us the circumstances under which you received this envelope?

A I received that envelope given to me by Arnold Pasicolan.

Q If you answer in monosyllable we will not understand. Alright, you tell your story?

A

Redentor Aguinaldo on February 17 told me that he is going to give me a job. What I will do is get the envelope and bring it to a certain subdivision in Las Piñas and somebody will pick it up and pay me P100.00 for it.

Proceed.

ATTY. I. CRUZ:

Q Now, do you know the person to whom you are to deliver the envelope?

A No, sir.

Q Now, if you do now know the person to whom you will deliver the envelope.

JUSTICE HERMOSISIMA:

You may not cross-examine, tell him to tell us facts.

ATTY. I. CRUZ:

Q Where specifically in the subdivision in Parañaque where you will deliver the envelope?

A BF Homes.

JUSTICE HERMOSISIMA:

Q To what particular person will you supposed to deliver it?

A I was just asked to go to that place and somebody will approach me.

Q

To make your story more believable, BF Homes in Parañaque is a very big subdivision. You enter that subdivision and there will be several persons whom you can see there. How will the person know that you are carrying an envelope for him. Where were you supposed to deliver it. If you cannot explain that, we will not believe you?

A In that subdivision, there is a vacant place where there are no houses. It is where I often go.

Q BF Homes subdivision in Parañaque has several vacant lots, how will you know what vacant lot to proceed to?

A It was pointed to me by Aguinaldo.

Q So, Aguinaldo went with you in the morning of that same day and pointed to you the place?

A In the morning of that same day and he pointed to me the place.

Second. The petitioner contends that the Sandiganbayan erred in admitting in evidence the letters signed by him because he was asked to sign them during custodial investigation without the assistance of counsel. The following provisions of the Constitution are invoked by petitioner:

Article III, §12(1). - Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

....

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

§17. No person shall be compelled to be a witness against himself.

Petitioner's counsel says that the signing of petitioner's and his co-accused's names was not a mere mechanical act but one which required the use of intelligence and therefore constitutes self-incrimination. Petitioner's counsel presumably has in mind the ruling in *Beltran v. Samson*[20] to the effect that the prohibition against compelling a man to be a witness against himself extends to any attempt to compel the accused to furnish a specimen of his handwriting for the purpose of comparing it with the handwriting in a document in a prosecution for falsification. "Writing is something more than moving the body, or the hand, or the fingers; writing is not a purely mechanical act because it requires the application of intelligence and attention,"[21] so it was held.

To be sure, the use of specimen handwriting in *Beltran* is different from the use of petitioner's signature in this case. In that case, the purpose was to show that the specimen handwriting matched the handwriting in the document alleged to have been falsified and thereby show that the accused was the author of the crime (falsification) while in this case the purpose for securing the signature of petitioner on the envelopes was merely to authenticate the envelopes as the ones seized from him and Ronnie Romero. However, this purpose and petitioner's signatures on the envelope, when coupled with the testimony of prosecution witnesses that the envelopes seized from petitioner were those given to him and Romero, undoubtedly help establish the guilt of petitioner. Since these signatures are actually evidence of admission obtained from petitioner and his co-accused under circumstances contemplated in Art. III, §§12(1) and 17 of the Constitution, they should be excluded. For indeed, petitioner and his co-accused signed following their arrest. Hence, they were at the time under custodial investigation, defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in a significant way.[22] Under the Constitution, among the rights of a person under custodial investigation is the right to have competent and independent counsel preferably of his own choice and if the person cannot afford the services of counsel, that he must be provided with one.

However, the letters are themselves not inadmissible in evidence. The letters were validly seized from petitioner

and Romero as an incident of a valid arrest. A ruling that petitioner's admission that the letters in question were those seized from him and his companion on February 17, 1989 is inadmissible in evidence does not extend to the exclusion from evidence of the letters themselves. The letters can stand on their own, being the fruits of a crime validly seized during a lawful arrest. That these letters were the ones found in the possession of petitioner and his companion and seized from them was shown by the testimonies of Vela and Tumagan. Indeed, petitioner and his co-accused were not convicted solely on the basis of the signatures found on the letters but on other evidence, notably the testimonies of NBI agents and other prosecution witnesses.

WHEREFORE, the decision of the Sandiganbayan is AFFIRMED.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Associate Justice Jose Balajadia and concurred in by Presiding Justice Francis Garchitorena and Associate Justice Narciso Atienza.

[2] TSN, p. 8, Oct. 29, 1990.

[3] TSN, p. 6, Oct. 30, 1990.

[4] TSN, p. 11, Oct. 29, 1990.

[5] Ibid.

[6] Id., p. 12.

[7] TSN, pp. 46, 52, Oct. 31, 1990.

[8] TSN, pp. 12-13, Oct. 31, 1990.

[9] TSN, pp. 13-14, Oct. 29, 1990.

[10] Id., p. 15.

[11] TSN, p. 22, Oct. 30, 1990.

[12] TSN, p. 22, Oct. 31, 1990.

[13] TSN, pp. 10-13, Sept. 5, 1991.

[14] Id., p. 16.

[15] TSN, p. 25, Oct. 31, 1990.

[16] Decision of the Sandiganbayan, p. 34.

[17] TSN, p.18, Oct. 30, 1990.

[18] TSN, pp. 5-8, April 1, 1992.

[19] TSN, pp. 7-11, Nov. 25, 1991.

[20] 53 Phil. 570 (1929).

[21] Id.

[22] People v. Caguioa, 95 SCRA 2 (1980).

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