

ASUNCION GALANG ROQUE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 138954. November 25, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision of the Court of Appeals in CA–G.R. CR No. 20411, entitled “People of the Philippines vs. Asuncion Galang Roque,” which affirmed in toto the decision of the Regional Trial Court (RTC) of Guagua, Pampanga, Branch 49, where petitioner was found guilty of the crime of qualified theft.

In an information dated December 3, 1990, the petitioner was charged with qualified theft in the Regional Trial Court of Guagua Pampanga, Branch 49. The Information reads as follows:

That on or about the 16[th] day of November, 1989, in the municipality of Floridablanca, province of Pampanga, Philippines and within the jurisdiction of his Honorable Court, the above-named accused ASUNCION GALANG ROQUE, being then employed as teller of the Basa Air Base Savings and Loan Association Inc. (BABSLA) with office address at Basa Air Base, Floridablanca, Pampanga, and as such was authorized and reposed with the responsibility to receive and collect capital contributions from its member/contributors of said corporation, and having collected and received in her capacity as teller of the BABSLA the sum of TEN THOUSAND PESOS (P10,000.00), said accused, with intent of gain, with grave abuse of confidence and without the knowledge and consent of said corporation, did then and there willfully, unlawfully and feloniously take, steal and carry away the amount of P10,000.00, Philippine currency, by making it appear that a certain depositor by the name of Antonio Salazar withdrew from his Savings Account No. 1359, when in truth and in fact said Antonio Salazar did not withdr[a]w the said amount of P10,000.00 to the damage and prejudice of BABSLA in the total amount of P10,000.00, Philippine currency.

All contrary to law.[1]

The evidence of the prosecution consisted of the testimonies of three witnesses, namely: Antonio Salazar, Rosalina de Lazo and Reynaldo Manlulu and Exhibits A to G with submarkings.

The first prosecution witness, Antonio Salazar (Salazar) is a member/depositor of the Basa Air Base Savings and Loan Association Inc. (BABSLA) as evidenced by his passbook No. 1359. He was made to sign two ledgers when he opened his savings account. On November 16, 1989, Salazar made a deposit of P2,000 at the BABSLA; however, he did not make any withdrawal, nor did he authorize anyone to do the same on that date or on November 17, 1989 or for the whole month of November of that year. Salazar disclosed that around July 1990 he heard that the funds of other depositors were missing inside the BABSLA and were supposedly clandestinely circulating around the base. Prodded by this news, and considering that the balance in his passbook was P46,000, he went to the BABSLA to withdraw P40,000, but was informed that his balance at the BABSLA was insufficient to cover the withdrawal. He was not allowed to withdraw. Rosalina de Lazo, the general manager, informed him that several withdrawals were made on his account amounting to P30,500, as evidenced by three (3) withdrawal

slips. Included among these withdrawal slips is one with the amount of P10,000, dated November 16, 1989. Salazar claimed that the signature appearing on said withdrawal slip was not his signature. He does not personally know who made the withdrawal of P10,000. Salazar assumed that the one in control of the funds made the withdrawal.[2]

The second prosecution witness was the general manager of the BABSLA in the person of Rosalina de Lazo (de Lazo). She has held her position as general manager since 1983. De Lazo averred that the BABSLA had only one teller, and that the petitioner, Asuncion Galang Roque, held that job from 1989 up to the last working day of June 1990. She added that the petitioner had not been absent from work, particularly in 1989. Sometime in July 1990, she met MSgt. Antonio Salazar, who was complaining that the amount of P30,500 was missing from his account. A comparison of the bank's ledger and his passbook manifested that there were three (3) withdrawals appearing on the ledger that do not appear in his passbook, inclusive of the withdrawal made on November 16, 1989. She saw the three (3) withdrawal slips and in the withdrawal slip dated November 16, 1989 the initial after the figure 11-17-89 is the customary initial of the petitioner. She claimed that she was familiar with the customary initial of the petitioner. The withdrawal slip dated November 16, 1989 was made after 3:00 o'clock in the afternoon of the same day but was stamped 11-17-89, as it is bank regulation that all transactions made after 3:00 p.m. will be entered in the book the next day.

De Lazo further testified that at the commencement of the business hour, petitioner gets cash from the treasurer and her beginning cash on November 17, 1989 per Teller's Daily Report was P355,984.53 which she used to serve all kinds of transactions pertaining to withdrawals. The initial over the typewritten name "agroque" is the customary initial of the petitioner, Asuncion Galang Roque. De Lazo claimed to be familiar with it. At the end of the work day petitioner prepared the Abstract of Payment, which is a summary of the withdrawals the teller paid that day as evidenced by several withdrawal slips.

De Lazo testified that before the petitioner went on forced leave petitioner sought her assistance because she feared she would be removed from work. She claimed that petitioner admitted to taking some money from the depositors, including the account of Sgt. Salazar. Unable to help petitioner, she referred her to Col. Dunilayan, the president and chairman of the BABSLA, who told her to return the money immediately. Petitioner told Col. Dunilayan that she would return the money. She failed to do so. During the same meeting, petitioner, in the presence of Col. Dunilayan and de Lazo, prepared a list containing the names of members from whose accounts she took money. Petitioner gave the list to Col. Dunilayan. When petitioner failed to return the money they decided to file a case against her. In the morning of November 17, de Lazo was already aware of the taking of the P10,000 that occurred the day prior. Since she had full trust and confidence in petitioner, and did not fear that this anomaly would persist, she did not ask for the presentation of the passbook so that the corresponding entries could be made in order to avoid a discrepancy between the ledger and the passbook, nor did she send notice to Antonio Salazar. It is the practice of the bank that all withdrawals require the presentation of the passbook. This was the first instance that a transaction was not recorded in the passbook. There are only a few cases wherein she (de Lazo) allows deposits to be made without the presentation of the passbook on the same day. In these instances she just requires the depositor to come some other time for the recording of the transaction in the passbook. As of the date of this testimony, the BABSLA had already paid deposits on accounts from which the petitioner had taken money, including that of Antonio Salazar as indicated in the bank records.[3]

The third and last prosecution witness is Reynaldo Manlulu, who is both the treasurer and a member of the board of directors of the BABSLA. He testified that petitioner was the teller of the BABSLA in November 1989 and that she reported for work on the 17th of that month. He intimated that on that date petitioner got a beginning cash from him amounting to P355,984.53, including all the the transactions that occurred after 3:00 p.m. of the

preceding day. This beginning cash can be seen in the Teller's Daily Report. The signature above the typewritten name "agroque" is petitioner's because she signed it in his presence. Apart from the beginning cash, he also turned over to petitioner the transactions that took place after 3:00 p.m. of the preceding day, particularly the withdrawal slip of MSgt. Salazar. At the end of the business day of November 17, 1989, she prepared an abstract of payment and in this abstract the initial over the typewritten name "agroque" is the initial of the petitioner because she signed it in his presence. Petitioner paid the withdrawal of P16,300 evidenced by the withdrawal slips attached to the abstract of payment. After she prepared the abstract of payment, petitioner turned over to him the cash and all the transactions that were taken after 3:00 p.m. A Cash Count shows the total cash that petitioner turned over to him. The initial over the typewritten name "agroque" is petitioner's because it was signed in his presence.[4]

The evidence for the petitioner consists of the testimony of the petitioner herself and that of Atty. Norbin Dimalanta and Exhibits 1 to 5 with sub-markings.

Petitioner, Asuncion Galang Roque, testified that she was employed as teller at the BABSLA from 1979 until her termination in 1990. In the morning she gets the money from the treasurer and they do a cash count which is reflected in the Teller's Daily Report and at 3:00 p.m. she prepares and submits an abstract of payment. However, before making the abstract, she and the treasurer conduct a cash count and the remaining cash is turned over to the treasurer. As a teller, she received deposits and payments, deposits of checks and payments of loans. She does not discharge any memorandum or withdrawals unless both the manager and the treasurer previously approve it. Depositors cannot withdraw after 3:00 p.m., unless they talk to the manager or treasurer. Withdrawals done after 3:00 p.m. are reflected as transactions of the following day. She insisted that the charge against her of stealing and carrying away P10,000 is false since she did not prepare the withdrawal slip dated November 16, 1989 which involves the account of Antonio Salazar. She also denied forging the signature of Salazar and affixing her initial. Petitioner also disowned the initial in the abstract of payment dated November 17, 1989 and the initials on several withdrawal slips. She claimed to be innocent and contended that Rosalina de Lazo is the one who is guilty because she was only used by the president. The latter is still connected with the BABSLA while the petitioner was terminated in June 1990.

Throughout the eleven years that petitioner worked as a teller at the BABSLA, she had never been absent from work or required by the treasurer to explain any discrepancy or anomaly related to the cash that she handled as a teller. Before her dismissal, petitioner was not suspended by the board of directors of the BABSLA during the investigation of her case. She was put on forced leave which eventually led to her termination. The manager was also supposed to be on forced leave. However, when the manager reported for work and some members protested and filed a petition, the president asked them to retract their statements by means of executing an affidavit of desistance. Even though petitioner received notice regarding the investigation, she did not attend because she knew the personalities of the members of the committee. Only the accused and the complainants whose accounts were withdrawn were investigated. She filed a complaint with the Department of Labor in connection with her dismissal but it was dismissed because she did not pursue it. Apart from the president, there were seven (7) members of the board of directors of the BABSLA in 1990: Col. Dunilayan, Col. Sanchez, MSgt. Romero, Sgt. Manlulu, Sgt. Torato, Mrs. Bagasbas and Capt. Baluyut. Capt. Baluyut was subsequently dismissed as a member of the board of directors.[5]

The second witness for the petitioner was Atty. Norbin Dimalanta. He averred that he only gave advice regarding the legality of the possible dismissal of the petitioner based on the evidence the committee gathered. He was present when the evidence and witnesses were presented. Proper notices were sent to the accused. The chairman of the committee, Leonardo Tolentino, concluded that the initials on the withdrawal slips were similar to the

petitioner's initials. He did not suggest the consultation of a handwriting expert on forgery since there were other pieces of evidence showing that the petitioner figured in the anomaly because several witnesses identified the figures appearing in the original copy of the questioned receipt as written by the petitioner. His conclusion that no one else could have done it except for Mrs. Roque was arrived at only after the investigation of the records and documents presented to the committee.[6]

The RTC found the petitioner guilty beyond reasonable doubt of the crime charged, on the following grounds:

After a careful evaluation of the evidence presented by both sides, the Court finds that the prosecution has proved the guilt of the accused beyond reasonable doubt. This finding is supported by the categorical testimony of prosecution witness Reynaldo Manlulu who testified that on November 17, 1989 accused received from him a beginning cash in the amount of P355,984.53 which is shown in a Teller's Daily Report (Exh. D) prepared by the accused and signed by the accused in his presence (TSN, March 25, 1993, page 3). At the close of business day of November 17, 1989 the accused also prepared an Abstract of Payment (Exh. E) and she signed it in his presence (Id., page 6). Aside from the beginning cash he also turned over to the accused the transactions that took place after 3:00 o'clock of the preceding day particularly the withdrawal slip of M/Sgt. Salazar (Id., page 4) so that it can be entered on the records on that very date as bank regulation requires that transactions occurring after 3:00 o'clock of a particular day are recorded the following day. This explains why although the questionable withdrawal slip was dated November 16, 1989 it was stamped paid on November 17, 1989, for record purposes. Since it was the accused who gave Reynaldo Manlulu the withdrawal slip dated November 16, 1989 the presumption is that, being in possession of said withdrawal slip before its delivery to Reynaldo Manlulu, the accused is the one who prepared the said withdrawal slip. This particular transaction was turned over to him by the accused the previous day (Id., page 5).

The Teller's Daily Report dated November 17, 1989 reflects, among others, a total withdrawal on that date in the amount of P16,300.00. This amount is the totality of withdrawal after adding the seven (7) legitimate withdrawals amounting to P6,300.00 (Exhs. E-2 to E-8) and the questionable withdrawal of P10,000.00 (Exh. C). On the other hand, the Abstract of Payment (Exh. E) reflects, among others, a savings withdrawal of P16,300.00 which tallies with the Teller's Daily Report of that date and with the seven (7) withdrawal slips.

The defense interposed by the accused is one of denial. She claimed that all the initials in the withdrawal slip of P10,000.00 (Exh. C), on the Teller's Daily Report (Exh. D), in the Abstract of Payment (Exh. E) as well as on the list of names of depositors (Exh. G) are not hers, implying, therefore, that these documents were prepared by somebody else. To emphasize that the initials on Exhibits C, D, E, and G are not hers, accused during the hearing on March 18, 1993 wrote six (6) of her initials in a piece of paper (Exh. "1"). However, the Court is not in a position to state whether the initial in Exhibit 1 is the same or different from the initials in Exhibits C, D, E, and G not being an expert along that line. Accused could have very well availed of court processes to request the NBI or PNP Crime Laboratory to determine whether or not the initials in Exhibits C, D, E, and G are hers by comparing the same with similar documents on file with the BABSLSA which are abundant as said documents are prepared daily and accused was, prior to her dismissal, the only teller of BABSLSA for over a year and has therefore accomplished a lot of these documents. Unfortunately, accused did not make any attempt to do so. At any rate, denial cannot prevail over the affirmative and categorical testimony of Reynaldo Manlulu who stated that accused turned over to him the questionable withdrawal slip on November 16, 1989 and it was in turn returned to the accused by said witness the following day November 17, 1989 in order that said transaction may be reflected on the records on that date. Said witness also positively testified that the accused initialed in his presence the Teller's Daily Report and the Abstract of Payment which said accused prepared on November 17, 1989. Denial is a self-serving negative evidence that cannot be given greater weight than the declaration of credible witnesses who testified on affirmative matters (*People vs. Carizo*, 233 SCRA 687). Like alibi, denial is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses (*People vs. Macagaleng*, 237 SCRA 299).

Accused after denying that the initials over the typewritten name A. G. Roque found in several exhibits introduced by the prosecution are not hers concentrated [on] her defense that Rosalina de Lazo, another prosecution witness, and the General manager of BABSILA was the author of the anomaly being imputed against her because said witness has committed certain anomalous transactions at the BABSILA in the past. Accused, however, never mentioned a word about the testimony of Reynaldo Manlulu which actually proved her undoing. She failed to controvert nor even comment on the damaging testimony of Reynaldo Manlulu that she turned over to him the questionable withdrawal slip and signed and/or placed her initial on the Teller's Daily Report and Abstract of Payment in his presence. Accused did not present any evidence that Reynaldo Manlulu had ulterior motives to testify falsely against her. When there is no evidence indicating that the principal witness for the prosecution was moved by improper motive, the presumption is that he was not so moved, and his testimony is entitled to full faith and credit. (People vs. Perciano, 233 SCRA 393). Accused also failed to controvert the testimony of Rosalina de Lazo that accused confessed before Col. Dunilayan, the president of BABSILA that she took money from some depositors which she promised to return and in fact wrote down the names of said depositors before Col. Dunilayan in a piece of paper which she handed to him. This fact and [it being] taken in the light that she failed to appear for investigation after the anomaly was discovered despite due notice, and her lack of interest to pursue a case she filed before the Department of Labor which caused its dismissal, do not speak well of her claim of innocence.

Art. 309, paragraph 2 of the Revised Penal Code provides that the penalty for theft is prision correccional in its medium and maximum periods if the value property stolen is more than P6,000.00 but does not exceed P12,000.00 and since the accused is charged for qualified theft, and the property or money stolen is P10,000.00, under Art. 310 the penalty prescribed for this crime is increased two (2) degrees higher, the basis of which is Art. 309, paragraph 2. Therefore the corresponding penalty is prision mayor maximum to reclusion temporal minimum. However, as the accused is qualified [under] the indeterminate sentence law, the prescribed penalty for her in this case is prision mayor as minimum to reclusion temporal as maximum.

WHEREFORE, judgment is rendered finding the accused guilty beyond reasonable doubt of the crime of qualified theft as charged and she is hereby sentenced to suffer the penalty of 6 years and 1 day of prision mayor as minimum to 12 years, 2 months and 1 day of reclusion temporal as maximum, and to indemnify the offended party Basa Air Base Savings & Loan Association Inc. in the amount of P10,000.00, and to pay the costs.

SO ORDERED.[7]

On appeal, the appellate court found the conviction in accord with law and the evidence and affirmed the decision of the RTC in toto. The Court of Appeals, quoting at length the lower court, reasoned, thus:

The Court fully agrees with the court quo in finding that appellant's guilt has been proven beyond reasonable doubt. As aptly pointed out by the lower court:

This finding is supported by the categorical testimony of prosecution witness Reynaldo Manlulu who testified that on November 17, 1989 accused received from him a beginning cash in the amount of P355,984.53 which is shown in a Teller's Daily Report (Exh. D) prepared by the accused and signed by the accused in his presence (TSN, March 25, 1993, page 30). At the close of business day of November 17, 1989 the accused also prepared an Abstract of Payment (Exh. E) and signed it in his presence (Id., page 6). Aside from the beginning cash he also turned over to the accused the transaction that took place after 3:00 o'clock of the preceding day particularly the withdrawal slip of M/Sgt. Salazar (Id., page 4) so that it can be entered on the records on that very date as bank regulation required that transaction occurring after 3:00 o'clock of a particular day are recorded the following day. This explains why although the questionable withdrawal slip was dated November 16, 1989 it was stamped paid on November 17, 1989 for record purposes. Since it was the accused who gave Reynaldo Manlulu the withdrawal slip dated November 16, 1989 the presumption is that being in possession of said withdrawal slip before its delivery to Reynaldo Manlulu the accused is the one who prepared the said withdrawal slip. This particular transaction was turned over to him by the accused the previous day (Id., page

5).

The Teller's Daily Report dated November 17, 1989 reflects among others a total withdrawal on that date in the amount of P16,300.00. This amount is the totality of withdrawal after adding the seven (7) legitimate withdrawals amounting to P6,300.00 (Exhs. E-2 to E-8) and the questionable withdrawal of P10,000.00 (Exh. C). On the other hand the Abstract of Payment (Exh. E) reflects among others a savings withdrawal of P16,300.00 which tallies with the Teller's Daily Report of that date and with the seven (7) withdrawal slips.

Appellant's defense is one of denial. She claims that the initials in the withdrawal slip of P10,000.00 (Exh. C) the Teller's Daily Report (Exh. D) the Abstract of Payment (Exh. E) and list of names of depositors (Exh. G) are not hers thus implying that these documents were prepared by somebody else. To bolster her claim she wrote her initials six (6) times on a piece of paper during the hearing on March 18, 1993 (Exh. 2) probably for comparison purposes. Admittedly there are noticeable differences between her initials in Exhibit 2 and those appearing on Exhibits C to G. This is of course understandable. It was not difficult for appellant to feign her initials in Exhibit 2 in order to mislead the Court.

At any rate no less than Rosalina de Lazo who as general manager of BABSLA is familiar with the initials has positively identified the initials on Exhibits C to G as hers. Likewise, Reynaldo Manlulu categorically stated not only that the questionable withdrawal slip (Exh. C) was turned over to him by appellant on November 16, 1989 and returned to her on November 17, 1989 but also that the Teller's Daily Report (Exh. D) and the Abstract of Payment (Exh. E) were initialed by her in his presence. Needless to say the initials in Exhibits C, D, and E bear such similarities as would lead to the conclusion that they were prepared by one and the same person. Hence, a more worthy and reliable evidence than the mere samples of her initials written during the trial is required to controvert the positive testimonies of Rosalina de Lazo and Reynaldo Manlulu.

No cogent reason has been shown for this court not to give credence to the prosecution witnesses. As aptly observed by the court a quo:

Accused after denying that the initials over the typewritten name A.G. Roque found in several exhibits introduced by the prosecution are not hers concentrated [on] her defense that Rosalina de Lazo another prosecution witness and the General Manager of BABSLA was the author of the anomaly being imputed against her because said witness has committed certain anomalous transactions at the BABSLA in the past. Accused however, never mentioned a word about the testimony of Reynaldo Manlulu which actually proved her undoing. She failed to controvert nor even comment on the damaging testimony of Reynaldo Manlulu that she turned over to him the questionable withdrawal slip and signed and/or placed her initial on the Teller's Daily Report and Abstract of Payment in his presence. Accused did not present any evidence that Reynaldo Manlulu had ulterior motives to testify falsely against her. When there is no evidence indicating that the principal witness for the prosecution was moved by improper motive the presumption is that he was not so moved and his testimony is entitled to full faith and credit. (People vs. Perciano 233 SCRA 393). Accused also failed to controvert the testimony of Rosalina de Lazo that the accused confessed before Col. Dunilayan the president of BABSLA that she took money from some depositors which she promised to return and in fact wrote down the names of said depositors before Col. Dunilayan in a piece of paper which she handed to him. This fact and [it being] taken in the light that she failed to appear for investigation after the anomaly was discovered despite due notice, and her lack of interest to pursue a case she filed before the Department of Labor which caused its dismissal, do not speak well of her claim of innocence.

In sum, the Court finds appellant's conviction of the offense charged in accord with law and evidence.[8]

Petitioner now raises the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY AFFIRMED THE DECISION OF THE LOWER COURT CONVICTING PETITIONER OF THE CRIME OF QUALIFIED THEFT THROUGH FALSIFICATION OF BANK DOCUMENTS?

II

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY AFFIRMED THE DECISION OF THE LOWER COURT CONVICTING PETITIONER OF THE CRIME OF QUALIFIED THEFT BECAUSE OF THE WEAKNESS OF THE DEFENSE OFFERED BY PETITIONER AND NOT ON THE STRENGTH OF THE EVIDENCE OF THE PROSECUTION?

III

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY AFFIRMED THE DECISION OF THE LOWER COURT CONVICTING PETITIONER OF THE CRIME OF QUALIFIED THEFT IN THE ABSENCE OF ANY EVIDENCE WHETHER TESTIMONIAL OR DOCUMENTARY TO THE EFFECT THAT PETITIONER WAS SEEN OR CAUGHT IN THE ACT OF TAKING OR CARRYING AWAY THE SUM OF P10,000.00?

IV

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY AFFIRMED THE DECISION OF THE LOWER COURT CONVICTING PETITIONER OF THE CRIME OF QUALIFIED THEFT WHEN THE AMOUNT OF P10,000.00 WHICH CONSTITUTES THE CORPUS DELICTI OR BODY OF THE CRIME WAS NEVER OFFERED IN EVIDENCE BY THE PROSECUTION?

V

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY AFFIRMED THE DECISION OF THE LOWER COURT CONVICTING PETITIONER OF THE CRIME OF QUALIFIED THEFT WHEN THE PROSECUTION FAILED TO PROVE BEYOND REASONABLE DOUBT THE FACT OF LOSS OF THE AMOUNT OF P10,000.00 IN THE ABSENCE OF ANY AUDIT BY AN INDEPENDENT AUDITOR?[9]

Said issues may be summed up into two:

- Whether or not qualified theft may be committed when the personal property is in the lawful possession of the accused prior to the commission of the alleged felony?
- Whether or not the elements of qualified theft were proven?

First Issue

Petitioner contends:

Theft as defined in Article 308 of the Revised Penal Code requires physical taking of another's property without violence or intimidation against persons or force upon things.

The crime of theft is akin to the crime of robbery. The only difference is in robbery there is force upon things or violence or intimidation against persons in taking of personal properties. In the crime of theft the taking of the personal property with intent to gain is without violence against or intimidation of persons nor force upon things and the taking shall be without the consent of the owner. In robbery, the taking is against the will of the owner.

Under Article 308 of the Revised Penal Code, the following are the elements of the crime of theft:

- Intent to gain;

- Unlawful taking;
- Personal property belonging to another;
- Absence of violence or intimidation against persons or force upon things.

The foregoing requirements presume that the personal property is in the possession of another, unlike estafa, [where] the possession of the thing is already in the hands of the offender. In *People vs. Lacson*, 57 Phil. 325, it was held:

“Commentators on the Spanish Penal Code lay great stress on the taking away, that is, getting possession in theft, laying hold of the thing, so that if the thing is not taken away, but received and then appropriated or converted, without consent of the owner, it may be any other crime, that of estafa for instance.”

Can a person tasked to receive and collect capital contributions and having collected and received in her capacity as teller as alleged in the information, be guilty of theft? The question should be answered in the negative. xxx[10]

Petitioner’s argument contradicts jurisprudence. In *U.S. v. De Vera*, [11] the accused, Nieves de Vera, received from Pepe, an Igorot, a bar of gold weighing 559.7 grams for the purpose of having a silversmith examine the same, and bank notes amounting to P200 to have them exchanged for silver coins. Accused appropriated the bar of gold and bank notes. This Court, citing Spanish and U.S. jurisprudence, ruled that the crime committed was theft and not estafa since the delivery of the personal property did not have the effect of transferring the juridical possession, thus such possession remained in the owner; and the act of disposal with gainful intent and lack of owner’s consent constituted the crime of theft.

The principle enunciated in *U.S. v. De Vera* was reiterated in *People v. Trinidad*, [12] thus:

The defendant received a finger ring from the offended party for the purpose of pledging it as security for a loan of P5 for the benefit of said offended party. Instead of pledging the ring, the defendant immediately carried it to one of her neighbors to whom she sold it for P30 and appropriated the money to her own use.

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The defendant is undoubtedly guilty of having sold the ring without authority and the only question which presents some difficulty is to determine whether the crime committed was theft or whether it should be classified as estafa. The question is discussed at length in the case of *United States vs. De Vera* (43 Phil., 1000) in which the court, citing various authorities, held that “When the delivery of a chattel or cattle has not the effect of transferring the juridical possession thereof, or title thereto, it is presumed that the possession of, and title to, the thing so delivered remains in the owner; and the act of disposing thereof with intent of gain and without the consent of the owner constitutes the crime of theft.” This view seems to be supported both by Spanish and American authorities.

xxx

Though the facts in the present case differs somewhat from those in the *De Vera* case, the underlying principle is the same in both cases: the juridical possession of the thing appropriated did not pass to the perpetrators of the crime, but remained in the owners; they were agents or servants of the owners and not bailees of the property. (See 17 R. C. L., 43, par. 49.) But it has been suggested that one of the essential elements of the crime of theft is that the intent to misappropriate the property taken must exist at the time of the asportation and that while this element clearly existed in the *De Vera* case, it is not as apparent in the case at bar.

We may agree that in cases such as the present the crime committed should not be regarded as theft unless the circumstances are such that it must be presumed that the intent to convert or misappropriate the property existed at the time it was received by the perpetrator of the crime. But the existence of such intent is, in our

opinion, fully as apparent in this case as it was in the De Vera case; the defendant, according to her own statement, offered the ring for sale immediately after its delivery to her, and we are forced to conclude that she did not receive it with honest intentions, but had the disposal of it in mind at the time.

In the case of *People v. Locson*[13] which also deals with money of a bank in the possession of its teller, the Court articulated:

Although the question is not specifically raised in the assignments of error, the court has carefully considered the classification of the crime committed by the defendant and found it to be correctly classified by the trial court as qualified theft. The money was in the possession of the defendant as receiving teller of the bank, and the possession of the defendant was the possession of the bank. When the defendant, with a grave abuse of confidence, removed the money and appropriated it to his own use without the consent of the bank, there was the taking or apoderamiento contemplated in the definition of the crime of theft.

In the case of the *United States vs. De Vera* (43 Phil., 1000, 1003), Justice Villamor speaking for the court said:

"The argument advanced in support of the contention of the defense is that the goods misappropriated were not taken by the accused without the consent of the owner who had delivered them to her voluntarily, and this element being lacking, it cannot be the crime of theft.

"It is well to remember the essential elements of the crime of theft, as expounded in the textbooks, which are as follows: First, the taking of personal property; second, that the property belongs to another; third, that the taking away be done with intent of gain; fourth, that the taking away be done without the consent of the owner; and fifth, that the taking away be accomplished without violence or intimidation against persons or force upon things.

"The commentators on the Spanish Penal Code, from which ours was adopted, lay great stress on the first element, which is the taking away, that is, getting possession, laying hold of the thing, so that, as Viada says, if the thing is not taken away, but received and then appropriated or converted without the consent of the owner, it may be any other crime, that of estafa for instance, but in no way that of theft, which consists in the taking away of the thing, that is, in removing it from the place where it is kept by the legal owner, without the latter's consent, that is, without obtaining for the purpose the consent of the legitimate owner."

The doctrine of the case as stated in the syllabus is as follows:

"When the delivery of a chattel or cattle has not the effect of transferring the juridical possession thereof, or title thereto, it is presumed that the possession of, and title to, the thing so delivered remains in the owner; and the act of disposing thereof with intent of gain and without the consent of the owner constitutes the crime of theft."

The Supreme Court of Spain in a decision of June 23, 1886 held that a shepherd, who takes away and converts to his own use several head of the sheep under his care, is guilty of qualified theft. (Viada: Vol. 3, p. 433, 4th ed.)

In the case of *People v. Isaac*,[14] which involved a temporary driver of a public service vehicle, this Court pronounced:

In the case of *U. S. vs. De Vera* (43 Phil., 1000), this Court said that when the delivery of a chattel has not the effect of transferring the juridical possession thereof, or title thereto, it is presumed that the possession of, and title to, the thing so delivered remains in the owner; and the act of disposing thereof with intent of gain and without the consent of the owner constitutes the crime of theft. This, we think, is actually the case here. For as we see it, appellant had only substituted for the regular driver of a vehicle devoted to the transportation of passengers for a fare or compensation and therefore operated as a public utility; and while his arrangement with the owner was to turn in, not all the fare collected, but only a fixed sum known in the trade as "boundary",

still he cannot be legally considered a hirer or lessee, since it is ordained in section 26 of the Rules of Regulations of the Public Service Commission that "no motor vehicle operator shall enter into any kind of contract with any person if by the terms thereof it allows the use and operation of all or any of his equipment under a fixed rental basis." In the eye of the law then, appellant was not a lessee but only an employee or agent of the owner, so that his possession of the vehicle was only an extension of that of the latter. In other words, while he had physical or material possession of the jeepney, the juridical possession thereof remained in the owner. Under those circumstances his disposing of the jeepney with intent of gain and without the consent of its owner makes him guilty of theft.

Quoting from Ruling Case Law, this Court has also said in the same case:

"A felonious taking is necessary in the crime of larceny, and generally speaking, a taking which is done with the consent or acquiescence of the owner of the property is not felonious. But if the owner parts with the possession thereof for a particular purpose, and the person who receives the possession avowedly for that purpose has the fraudulent intention to make use of it as the means of converting it to his own use and does so convert it, this is larceny, for in such case, the fraud supplies the place of the trespass in the taking, or, as otherwise stated, the subsequent felonious conversion of the property by the alleged thief will relate back and make the taking and conversion larceny."

Under this theory, appellant, who, according to his own confession, took the vehicle from its owner already with the intention of appropriating it, should also be deemed guilty of theft. (*People vs. Trinidad*, 50 Phil., 65.)

In the present case, what is involved is the possession of money in the capacity of a bank teller. In *People v. Locson*,^[15] cited above, this Court considered deposits received by a teller in behalf of a bank as being only in the material possession of the teller. This interpretation applies with equal force to money received by a bank teller at the beginning of a business day for the purpose of servicing withdrawals. Such is only material possession. Juridical possession remains with the bank. In line with the reasoning of the Court in the above-cited cases, beginning with *People v. De Vera*, if the teller appropriates the money for personal gain then the felony committed is theft and not estafa. Further, since the teller occupies a position of confidence, and the bank places money in the teller's possession due to the confidence reposed on the teller, the felony of qualified theft would be committed.

Second Issue

The elements of qualified theft include the elements of theft and any of the circumstances enumerated in Article 310 of the Revised Penal Code^[16] (RPC). The elements of theft, which is defined in Article 308 of the RPC,^[17] are the following:

xxx there are five essential elements which constitute the crime of theft, namely: (1) Taking of personal property; (2) that said property belongs to another; (3) that said taking be done with intent to gain; (4) that, further, it be done without the owner's consent; and (5) finally, that it be accomplished without the use of violence or intimidation against persons, nor of force upon things.^[18]

The specific qualifying circumstance in Article 310 of the RPC which the information indicated was that the felony was committed with grave abuse of confidence. Hence, to warrant a conviction, the prosecution should have proven 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 of force upon things.
- That it be done with grave abuse of confidence.

Regarding the first element, the taking of personal property, the prosecution was not able to present direct evidence that petitioner took the P10,000 on November 16, 1989. The prosecution attempted to prove the taking through circumstantial evidence. One of the pieces of evidence that the prosecution adduced and the trial court and Court of Appeals relied on heavily for the conviction was the withdrawal slip for P10,000, dated November 16, 1989. Antonio Salazar disowned the signature on the withdrawal slip. However, he also indicated that he did not know who made the withdrawal. Rosalina de Lazo testified that the initial on the withdrawal slip, written after the figure 11-17-89, was the customary signature of petitioner. She, however, did not intimate the significance of petitioner's initial on the withdrawal slip. A careful inspection of all the withdrawal slips,[19] including the withdrawal slip stated above, shows that the date and the initial of petitioner were written across the stamped word "paid." This indicates that petitioner's initial was placed in her capacity as a teller which, therefore, only proves that this transaction passed through her hands in such capacity. It does not in any manner show that petitioner prepared the withdrawal slip or that the proceeds of the withdrawal increased her patrimony.

The trial court articulated and the Court of Appeals quoted in toto the following:

Since it was the accused who gave Reynaldo Manlulu the withdrawal slip dated November 16, 1989 the presumption is that, being in possession of said withdrawal slip before its delivery to Reynaldo Manlulu, the accused is the one who prepared the said withdrawal slip. This particular transaction was turned over to him by the accused the previous day[20]

This presumption is without basis in law. Under the rules of evidence, there is a fixed number of presumptions. These are contained in Sections 2 and 3 of Rule 131, of the Revised Rules of Court. Courts of law should not be too ready to generate other presumptions. After a thorough review of all the presumptions enumerated in Sections 2 and 3 of Rule 131, the presumption that comes closest to the one the RTC and Court of Appeals relied on is paragraph (j), Section 3 of Rule 131, which reads:

That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him;

In a long line of cases,[21] this Court has always applied this presumption to a situation where property has been stolen and the stolen property is found in the possession of the accused. In these cases the possession of the accused gives rise to the presumption that the accused is the taker of the stolen property. In the presumption availed of by the lower courts the property found in the possession of the accused, which is the withdrawal slip, is not stolen property. Furthermore, the presumption the lower court made was not that the petitioner stole anything, but rather that the petitioner was the maker of the withdrawal slip. It is plain that the presumption used by the lower court and the one found in paragraph (j), Section 3 of Rule 131 are different. Consequently, there is no basis for the finding that the withdrawal slip was prepared by the petitioner.

Another piece of evidence offered to prove petitioner's taking is her extrajudicial confession to de Lazo and Col. Dunilayan wherein she allegedly admitted taking money from the accounts of several members of the BABSLA and the list of people from whose accounts she took money, which list petitioner supposedly prepared in the presence of de Lazo and Col. Dunilayan. In the testimony of Rosalina de Lazo, all she mentioned was that petitioner confessed to having taken sums of money from the accounts of several depositors, including the account of Sgt. Salazar. Nowhere in her testimony did she mention that petitioner confessed the exact date on which she took the money, nor the amount she took from the account of Sgt. Salazar. It cannot be deduced from

the alleged verbal confession of petitioner that she was confessing a specific taking of P10,000 from the account of Sgt. Salazar on November 16, 1989. She also saw petitioner prepare the list of depositors from whose accounts she had taken some money. Again, a perusal of the handwritten list allegedly prepared by petitioner does not disclose any relation to the specific taking alleged in the information. All that was written on the list, among other names and figures, was the name Salazar, Antonio and the number fifteen (15) to the right of the name. It must be kept in mind that the information was for a theft of P10,000 that occurred on the 16th of November 1989. The list does not mention the date on which the money was taken. Neither does it disclose the precise amount that was taken.

The other pieces of evidence such as the Teller's Daily Report and Abstract of Payment, to which witnesses de Lazo and Salazar both testified as containing the customary initials of petitioner, only corroborate the withdrawal slip. They merely reveal that on the 16[th] of November 1989, a withdrawal was made on the account of Sgt. Antonio Salazar and that this withdrawal passed through the hands of petitioner in her capacity as a teller of the BABSLA. Again, they prove neither that petitioner prepared the subject withdrawal slip nor that she took the P10,000 on that date.

From the foregoing discussion it is plain that the prosecution failed to prove by direct or sufficient circumstantial evidence that there was a taking of personal property by petitioner.

A discussion of the other elements of qualified theft mentioned above is not necessary. Even if the other elements were satisfactorily proven, the first and most basic element of qualified theft was not established. The prosecution was, therefore, unsuccessful in proving beyond reasonable doubt that the petitioner committed the crime of qualified theft.

WHEREFORE, the petition is GRANTED and the decision and resolution of the Court of Appeals dated December 28, 1998 and May 26, 1999, respectively, are REVERSED and SET ASIDE. Petitioner, Asuncion Galang Roque, is ACQUITTED of the crime of qualified theft charged in the information. No costs.

SO ORDERED.

Quisumbing, (Acting Chairman), Ynares-Santiago, and Carpio, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

[1] RTC Records, p. 2.

[2] TSN, May 16, 1991, pp. 3-18.

[3] TSN, November 12, 1991, pp. 2-23; December 19, 1991, pp. 1-18.

[4] TSN, October 22, 1992, pp. 2-9; December 10, 1992, pp. 2-17.

[5] TSN, March 18, 1993, pp. 3-11; March 25, 1993, pp. 1-13; May 6, 1993, pp. 2-9.

[6] TSN, June 17, 1993, pp. 3-10.

[7] CA Rollo, pp. 42-44.

[8] See CA Decision dated December 28, 1998 and Resolution dated May 26, 1999 denying Motion for Reconsideration, Rollo pp. 28-35, 40.

[9] Rollo, pp. 16-17.

[10] Rollo, pp. 17-18.

[11] 43 Phil. 1000 (1921).

[12] 50 Phil. 65 (1927).

[13] 57 Phil. 325 (1932).

[14] 96 Phil. 931 (1955).

[15] Supra.

[16] 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 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.

[17] 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. xxx

[18] People v. Yusay, 50 Phil. 598 (1927).

[19] Exhibits E-2 to E-8, Exhibits for the Prosecution.

[20] CA Rollo, p. 42.

[21] People v. Geron, 281 SCRA 37 (1997); People v. Zafra, 237 SCRA 664 (1994); People v. Repuela, 183 SCRA 244 (1990); People v. Newman y Beclar, 163 SCRA 496 (1988); People v. Acejo, 97 SCRA 226 (1980); People v. Tanchoco, 76 Phil. 463 (1946); People v. Malasugui, 63 Phil. 221 (1936); U.S. v. Mohamd Ungal, 37 Phil. 835 (1918); U.S. v. Divino, 18 Phil. 425 (1911); U.S. v. Espia, 16 Phil. 506 (1910); U.S. v. Carreon, 12 Phil. 51 (1908); U.S. v. Soriano, 9 Phil. 441 (1907).

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