

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OLIVIA ALETH GARCIA CRISTOBAL, ACCUSED-APPELLANT.

G.R. No. 159450. March 30, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Although a waiver of the right to present evidence by the accused is not a trivial matter to be lightly regarded by the trial court, the filing of the demurrer to evidence without express leave of court operates as a waiver that binds the accused pursuant to the express provision of the Rules of Court.

Under challenge in this appeal is the decision promulgated on July 31, 2003 in C.A.-G.R. CR No. 24556, whereby the Court of Appeals (CA) affirmed the conviction for qualified theft of the accused, a teller of complainant Prudential Bank, and punished her with reclusion perpetua,[1] thereby modifying the decision dated May 26, 2000 rendered by the Regional Trial Court, Branch 57, in Angeles City (RTC),[2] imposing an indeterminate sentence from ten (10) years and one (1) day of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum.

Antecedents

The information charged the accused with qualified theft, alleging:

That on or about the 2[nd] of January, 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, OLIVIA ALETH GARCIA CRISTOBAL, being then the teller of Prudential Bank, Angeles Main Branch, Sto. Rosario Street, Angeles City, and as such is entrusted with cash and other accountabilities, with grave abuse of trust and confidence reposed upon her by her employer, with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away cash money amounting to \$10,000.00, belonging to the Prudential Bank, Angeles Main Branch, represented by its Branch Manager, EDGARDO PANLILIO, to the damage and prejudice of Prudential Bank, Angeles Main Branch, in the aforementioned amount of TEN THOUSAND DOLLARS (\$10,000.00) or its equivalent of TWO HUNDRED SIXTY THOUSAND PESOS (P260,000.00), Philippine Currency and parity rate.

ALL CONTRARY TO LAW.[3]

After the accused pleaded not guilty at arraignment, the State presented four witnesses, namely: Prudential Bank Branch Manager Edgardo Panlilio, Sr., Bank Auditor Virgilio Frias, Bank Cashier Noel Cunanan, and account holder Apolinario Tayag.

The summary of the evidence of the State rendered in the assailed decision of the CA follows:[4]

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Among the six tellers in the Angeles City main branch of Prudential Bank, accused-appellant (hereafter "appellant") was the only teller assigned to handle dollar deposits and withdrawals.

On January 2, 1996, an internal spot-audit team headed by Prudential Bank's senior audit examiner Virgilio Frias ("Frias"), inventoried the cash accountabilities of the said branch by manually counting the money in each of the tellers' cash boxes. While the books of the branch showed that appellant had a cash accountability of \$15,040.52, the money in her cash box was only \$5,040.52.

Asked about the shortage of \$10,000.00, appellant explained that there was a withdrawal of \$10,000.00 on December 29, 1995 after the cutoff time which would be treated as a withdrawal on January 2, 1996. Appellant then presented to Frias a withdrawal memo dated January 2, 1996 showing a withdrawal of \$10,000.00 from Dollar Savings Account No. FX-836 ("FX-836") of Adoracion Tayag and her co-signatory, Apolinario Tayag.

On January 3, 1996, appellant showed the aforesaid withdrawal memo to the branch cashier, Noel Cunanan ("Cunanan"). Noticing that the said withdrawal memo did not contain the required signatures of two bank officers, Cunanan asked appellant what the nature of the transaction was. Appellant replied that the depositor, Apolinario Tayag, had instructed her to withdraw \$10,000.00 from his account on January 3, 1996, through his driver whom he had sent to the bank. Cunanan, however, did not notice that while the withdrawal was supposed to have been made on January 3, 1996, the withdrawal memo was dated January 2, 1996. Cunanan then instructed appellant to have the withdrawal posted in the corresponding ledger and to bring the withdrawal memo back to him so he and the branch manager, Edgardo Panlilio, could affix their signatures.

Meanwhile, Frias checked the account ledger of FX-836, and found a "hold jacket" indicating that no withdrawal from the said account should be allowed to reduce its balance below \$35,000.00. The supposed withdrawal of \$10,000.00 had reduced the account balance of FX-836 to \$26,077.51.

From the account ledger, Frias also discovered that a deposit of \$10,000.00 was made on January 2, 1996. He found the deposit memo on file. Thereafter, Frias compared the signature on the withdrawal memo with the specimen signatures of the depositors in their signature card. Finding a "big difference" in the signatures, he referred the matter to the branch manager, Edgardo Panlilio ("Panlilio").

Asked by Panlilio to explain, appellant reiterated that the withdrawal was made after the cut-off time on December 29, 1995. Doubting her explanation, Frias conducted another cash count. At that time, appellant's accountability based on the books of the bank was \$21,778.86, but the money in her cash box was only \$11,778.86, thus, short of US\$10,000.00. When Panlilio again asked appellant to explain, the latter started to cry and said she would explain to the bank president.

The next day, January 4, 1996, appellant told Panlilio that she gave the \$10,000.00 to a person on December 29, 1995 because her family was being threatened.

In her letter to the bank president dated January 4, 1996, appellant apologized and explained her shortage of \$10,000.00 and another shortage of P2.2 Million which the audit team had also discovered. She wrote:

... Sometime in the month of September, a man approached me at my counter and handed me a note demanding me (sic) to give him a big amount of money of P600,000. I looked at him and told him I don't have any. He told me to get at my drawer and not to tell anybody because their companions are at the nearby of my house (sic) and threatened me that something will happened (sic) to my kids. That time he looked back and I also saw another man w/ radio at his waist, who stood up and went out. I nervously handed him the money. While doing this, I tried to pull the alarm at my counter but it was out of order. This alarm was out of order for quite sometime but I was still hoping it might work. Since that day, time and again, he kept on coming back and I could not do anything but to give in to his request. His second, he demanded for (sic) another P600,000 but I gave him only P530,000. The 3[rd] & 4[th] was P550,000 each. Last December 29, 1995 at around 3:00 pm, I was surprised to see him at my counter, again, he was asking for money. I was balancing my dollar transaction. But that time, I had delivered my peso cash box to our cashier. He saw the bundle of \$10,000 which was on top of my desk because I was writing the breakdown on my cash count. He wanted me to give it to him & this time he pointed a gun at me and I got so nervous & gave him the dollars.

During this time, in order for me to be balance with (sic) my transactions, I cash out checks (suppose to be for late deposit) & included them in today's clearing. The following day, I validated the deposit slips as cash deposit. . .

Apolinario Tayag denied withdrawing \$10,000.00 from FX-836 either on December 29, 1995 or on January 2, 1996 when he was in Baguio City. He said he was not familiar with the withdrawal and deposit memos showing the withdrawal of \$10,000.00 from the said account and the subsequent deposit of the same amount therein. He also denied the signatures thereon as his or his mother's.

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Upon the State resting its case against the accused, her counsel filed a Demurrer to Evidence and Motion to Defer Defense Evidence,[5] praying for the dismissal of the charge on the ground that the evidence of the State did not suffice to establish her guilt beyond reasonable doubt.

However, the RTC denied the Demurrer to Evidence and Motion to Defer Defense Evidence and deemed the case submitted for decision on the basis that her filing her demurrer to evidence without express leave of court as required by Section 15, Rule 119, of the Rules of Court had waived her right to present evidence, viz:[6]

WHEREFORE, the Demurrer to Evidence filed by the accused is hereby denied for lack of merit.

Reviewing further the records of this case, there is evidence and proof that the Demurrer to Evidence filed by the accused Cristobal is without express leave of court hence, under Section 15 par. 2 of Rule 119, accused Cristobal has waived her right to present evidence and submit the case for judgment on the basis of the evidence for the prosecution.

In view thereof, this case filed against accused Cristobal is hereby submitted for decision.

SO ORDERED.

On May 26, 2000, therefore, the RTC rendered its decision finding and pronouncing the accused guilty of qualified theft,[7] disposing:

WHEREFORE, the Court finds Olivia Aleth Cristobal guilty beyond reasonable doubt of the crime of Qualified Theft and hereby sentences her to suffer the penalty of imprisonment of ten (10) years and one (1) day of prision mayor to twenty (20) years of reclusion temporal as maximum.

Accused Cristobal is also ordered to pay Prudential Bank, the amount of US \$10,000.00, representing the amount that was lost, plus interest.

SO ORDERED.

The accused appealed, but the CA affirmed her conviction on July 31, 2003, albeit modifying the penalty,[8] finding and ruling as follows:

The following circumstances as established by the prosecution's evidence, show beyond reasonable doubt that appellant stole US\$10,000.00 from Prudential Bank:

1. Appellant was the only teller in the Angeles City main branch of Prudential Bank assigned to handle dollar transactions. Thus, it was only she who had access to the subject account for purposes of dollar deposits and withdrawals;
2. She admitted having transacted or processed the supposed withdrawal of US\$10,000.00 from dollar savings account no. FX-836;

3. It was she who presented to the head auditor, Rolando Frias, the withdrawal memo for US\$10,000.00 supposedly withdrawn from dollar savings account no. FX-836, saying that it was withdrawn on December 29, 1995 after the cut-off time and would be considered a withdrawal on January 2, 1996;
4. The said withdrawal memo did not contain the required signatures of two bank officers;
5. The supposed withdrawal of \$10,000.00 from dollar savings account no. FX-836 reduced the balance thereof to 826,077.51, violating the "hold jacket" or instruction in the account ledger which disallowed any withdrawal from the said account that would reduce the balance thereof below P35,000.00;
6. The discrepancy in the signature on the withdrawal memo and the specimen signatures in the depositors' signature card;
7. Asked to explain the shortage of \$10,000.00 revealed by the second cash count, following the discovery of the aforesaid "hold jacket" in the account ledger and discrepancy in the signatures, appellant began to cry, saying she would just explain to the bank president;
8. The depositor, Apolinario Tayag, denied withdrawing money from dollar savings account no. FX-836 either on December 29, 1995, when appellant claimed the withdrawal was made, or on January 2, 1996, the date of the withdrawal memo, at which time he was in Baguio City. He was not familiar with the withdrawal and deposit memos showing the withdrawal of \$10,000.00 from the said account and the subsequent deposit of the same amount therein. He also denied that the signatures thereon belong to him or his mother, Adoracion Tayag, with whom he shares the account as co-signatory;
9. In her letter to the bank president, she admitted appropriating US\$10,000.00 and P2.2 Million, and explained how she covered it up;
10. Appellant gave different and inconsistent explanations for her shortage of US\$10,000.00. She explained to the auditors that the said amount was withdrawn on December 29, 1995 after the cut-off time, hence, would be considered as a withdrawal on January 2, 1996. To the branch cashier, Noel Cunanan, she said that Apolinario Tayag had instructed her to withdraw \$10,000.00 from his account on January 3, 1996, through his driver whom he had sent to the bank. Later, she told Panlilio and the bank president that she gave the \$10,000.00 to a person on December 29, 1995 because he had threatened her family; and
11. In her letter to the bank president, she mentioned five instances when the unidentified man supposedly threatened her and demanded money from her. However, she never reported any of these incidents to any of the bank officers or the police authorities.

Even without an eyewitness, the foregoing circumstances indicate that appellant committed the crime, to the exclusion of all others.

In the absence of an eyewitness, reliance on circumstantial evidence becomes inevitable. Circumstantial evidence is defined as that which indirectly proves a fact in issue through an inference which the factfinder draws from the evidence established. Resort thereto is essential when the lack of direct testimony would, in many cases, result in setting a felon free and denying proper protection to the community. In order that circumstantial evidence may be sufficient to convict, the same must comply with these essential requisites, viz., (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

As hereinbefore shown, there is more than one circumstance or indication of appellant's guilt. Moreover, the said circumstances, from which the act of taking could be inferred, had been established by the prosecution's evidence. And the combination of the said circumstances is clearly sufficient to convict the appellant of qualified theft beyond reasonable doubt.

In conclusion, We hold that the totality of the evidence points to no other conclusion than that

accused-appellant is guilty of the crime charged. Evidence is weighed not counted. When facts or circumstances which are proved are not only consistent with the guilt of the accused but also inconsistent with his innocence, such evidence, in its weight and probative force, may surpass direct evidence in its effect upon the court. This is how it is in this case.

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WHEREFORE, the assailed Decision convicting the accused-appellant of Qualified Theft is hereby AFFIRMED with MODIFICATION in that the penalty shall be reclusion perpetua and the accessory penalties of death under Article 40 of the Revised Penal Code, and accused-appellant shall pay Prudential Bank US\$10,000.00, without interest.

SO ORDERED.

Issues

In her appeal, the accused submits that the CA gravely erred:

- xxx in affirming the conviction of the accused on the basis of an information for qualified theft that charges the accused to have taken \$10,000.00 on January 2, 1996 when the evidence on record based on various admissions of the prosecution's witnesses reveal that the accused did not and cannot take away \$10,000.00 on January 2, 1996.
- xxx in affirming the conviction of the accused based on an extra-judicial admission that was made without assistance of counsel and hearsay evidence as testified by the next most possible suspects to the loss.
- xxx in affirming the conviction of the accused when the facts and evidence on record do not satisfy the elements of the crime as charged.
- xxx in affirming the conviction of the accused when the very procedure employed by the trial court in the case at bench showed leniency to the prosecution and strictness to the defense in violation of the constitutional and statutory rights of the accused.
- xxx in affirming the ruling of the trial court that the accused had waived her right to present evidence-in-chief despite the expressed motion to defer its presentation when the demurrer to evidence was filed.[9]

The assigned errors are restated thuswise:

- (a) Whether the information filed against the accused was fatally defective;
- (b) Whether the RTC correctly found that the accused had waived her right to present evidence in her defense; and
- (c) Whether the extrajudicial admission of taking the amount involved contained in the letter of the accused to the President of Prudential Bank was admissible under the rules and jurisprudence.

Ruling

We deny the petition for review and affirm the CA's decision.

1.

Findings of CA and RTC are affirmed
due to being based on the evidence

There is no question about the findings of fact being based on the evidence adduced by the Prosecution. The decisions of both lower courts are remarkable for their thoroughness and completeness. In fact, the accused did

not impugn the findings of fact, and confined herself only to the validity of the information and the legality of her letter due to its being held admissible as evidence against her. Although she decried her failure to present her evidence on account of her having demurred without express leave of court, that, too, was not an obstacle to the correctness of the findings of fact against her. Thus, we sustain the findings of fact, for findings of the CA upon factual matters are conclusive and ought not to be disturbed unless they are shown to be contrary to the evidence on record.[10]

2.

Information was sufficient and valid

The petitioner submits that the information charged her with qualified theft that allegedly transpired on December 29, 1995, but the evidence at trial could not be the basis of her conviction because it actually proved that the taking had transpired on January 2, 1996; and that the discrepancy would unduly prejudice her rights as an accused to be informed of the charges as to enable her to prepare for her defense. To bolster her submission, she cites the testimony of Virgilio Frias[11] to the effect that she was cleared of her accountability upon her turning her cash box over to the bank cashier on December 29, 1995, thereby negating the accusation that she had taken the money on December 29, 1995.

The petitioner's submission is untenable.

The main purpose of requiring the various elements of a crime to be set forth in the information is to enable the accused to adequately prepare her defense.[12] As to the sufficiency of the allegation of the time or date of the commission of the offense, Section 6 and Section 11, Rule 110 of the Revised Rules of Court, the rules applicable,[13] provide:

Section 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place wherein the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (5a)

Section 11. Time of the commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit. (10)

Conformably with these rules, the information was sufficient because it stated the approximate time of the commission of the offense through the words "on or about the 2[nd] of January, 1996," and the accused could reasonably deduce the nature of the criminal act with which she was charged from a reading of its contents as well as gather by such reading whatever she needed to know about the charge to enable her to prepare her defense.

The information herein did not have to state the precise date when the offense was committed, considering that the date was not a material ingredient of the offense. As such, the offense of qualified theft could be alleged to be committed on a date as near as possible to the actual date of its commission.[14] Verily, December 29, 1995 and January 2, 1996 were dates only four days apart.

With the information herein conforming to the standard erected by the Revised Rules of Court and pertinent judicial pronouncements, the accused was fully apprised of the charge of qualified theft involving the US\$10,000.00 belonging to her employer on or about January 2, 1996.

3.

CA and RTC did not err in deeming petitioner to have waived her right to present evidence

The accused contended that:

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(2) The trial court denied accused (sic) 'Demurrer To Evidence and Motion To Defer Defense Evidence' and ruled that the accused is considered to have waived her evidence (for alleged lack of leave of court). Although the accused is not principally relying on this error (because the prosecution's own evidence show that she is not guilty), still it was error for the trial court to deprive the accused of her day in court because the demurrer was at the same time, as stated in the title thereof, also a motion to defer defense evidence.[15]

The CA rejected her contention in the following manner:[16]

As to whether or not the Trial Court correctly ruled that appellant waived the presentation of her evidence when she filed her "Demurrer To Evidence and Motion to Defer Evidence" without prior leave of court, We rule in the affirmative.

Appellant's theory that prior leave of court had been requested because her demurrer was, at the same time, also a motion to defer defense evidence, cannot be sustained. A motion to defer evidence does not constitute a request for leave to file a demurrer to evidence. In fact, such motion indicates that appellant wanted the Trial Court to consider the demurrer before proceeding to hear her evidence. Furthermore, there is nothing in appellant's Demurrer from which it can be inferred that appellant was asking the Trial Court permission to move for the dismissal of the case.

Section 15, Rule 119 of the Rules of Criminal Procedure provides:

Sec. 15. Demurrer to Evidence. - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (Emphasis supplied.)

Clearly, when the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. In such a case, the waiver of the right to present defense evidence is unqualified.

Unavoidably, Our attention is drawn to the apparent negligence of appellant's counsel in failing to secure prior leave of court before filing her Demurrer to Evidence. However, We cannot lose sight of the fact that in law, the negligence of appellant's counsel binds her. Indeed, jurisprudence teems with pronouncements that a client is bound by the conduct, negligence and mistakes of his counsel.

The CA did not thereby err.

The rule in point is Section 15, Rule 119, of the Revised Rules of Court, viz:

Section 15. Demurrer to evidence. - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (n)

Under the rule, the RTC properly declared the accused to have waived her right to present evidence because she did not obtain the express leave of court for her demurrer to evidence, thereby reflecting her voluntary and knowing waiver of her right to present evidence. The RTC did not need to inquire into the voluntariness and intelligence of the waiver, for her opting to file her demurrer to evidence without first obtaining express leave of court effectively waived her right to present her evidence.

It is true that the Court has frequently deemed the failure of the trial courts to conduct an inquiry into the voluntariness and intelligence of the waiver to be a sufficient cause to remand cases to the trial courts for the purpose of ascertaining whether the accused truly intended to waive their constitutional right to be heard, and whether they understood the consequences of their waivers.[17] In *People v. Bodoso*,[18] a prosecution for a capital offense, we leaned towards the protection of the accused's constitutional right to due process by outlining the proper steps to be taken before deeming the right to present evidence as waived, thus:

Henceforth, to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, it shall be the unequivocal duty of the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in *People v. Aranzado* when an accused pleads guilty, particularly -

- The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.

- The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.

- During the hearing, it shall be the task of the trial court to -

- a. ask the defense counsel a series of question to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.

- b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any, or in default theory, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time to this purpose.

- c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.

- d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

In passing, trial courts may also abide by the foregoing criminal procedure when the waiver of the right to be present and be heard is made in criminal cases involving non-capital offenses. After all, in whatever action or

forum the accused is situated, the waiver that he makes if it is to be binding and effective must still be exhibited in the case records to have been validly undertaken, that is, it was done voluntarily, knowingly and intelligently with sufficient awareness of the relevant circumstances and likely consequences. As a matter of good court practice, the trial court would have to rely upon the most convenient, if not primary, evidence of the validity of the waiver which would amount to the same thing as showing its adherence to the step-by-step process outlined above.

Also, in *Rivera v. People*,^[19] which involved an accused charged with a non-capital offense who filed a demurrer to evidence without leave of court, the Court, citing *People v. Bodoso*, *supra*, remanded the case to the Sandiganbayan for further proceedings upon finding that the accused had not been asked whether he had understood the consequences of filing the demurrer to evidence without leave of court.

Yet, the accused cannot be extended the benefit of *People v. Bodoso* and *Rivera v. People*. The factual milieu that warranted the safeguards in said criminal cases had nothing in common with the factual milieu in which the RTC deemed the herein accused to have waived her right to present evidence. The accused in *People v. Bodoso*, without filing a demurrer to evidence, expressly waived the right to present evidence. The Court felt that the trial court ought to have followed the steps outlined therein. The accused in *Rivera v. People* filed a demurrer to evidence without having to obtain an express leave of court, considering that the Sandiganbayan itself had told him to file the demurrer to evidence. Thus, after the demurrer to evidence was denied, the accused was held to be still entitled to present his evidence.

The accused and her counsel should not have ignored the potentially prejudicial consequence of the filing of a demurrer to evidence without the leave of court required in Section 15, Rule 119, of the Revised Rules of Court.^[20] They were well aware of the risk of a denial of the demurrer being high, for by demurring the accused impliedly admitted the facts adduced by the State and the proper inferences therefrom.^[21] We cannot step in now to alleviate her self-inflicted plight, for which she had no one to blame but herself; otherwise, we may unduly diminish the essence of the rule that gave her the alternative option to waive presenting her own evidence.

4.

Petitioner's handwritten letter
is admissible in evidence

The next issue concerns the admissibility of the accused's letter dated January 4, 1996 to Prudential Bank's President explaining the shortage of her dollar collection as bank teller,^[22] the relevant portion of which follows:

xxx Sometime in the month of September, a man approached me at my counter and handed me a note demanding me (sic) to give him a big amount of money of P600,000. I looked at him and told him I don't have any. He told me to get at my drawer and not to tell anybody because their companions are at the nearby of my house (sic) and threatened me that something will happened (sic) to my kids. That time he looked back and I also saw another man w/ radio at his waist, who stood up and went out. I nervously handed him the money. While doing this, I tried to pull the alarm at my counter but it was out of order. This alarm was out of order for quite sometime but I was still hoping it might work. Since that day, time and again, he kept on coming back and I could'nt do anything but to give in to his request. His second, he demanded for (sic) another P600,000 but I gave him only P530,000. The 3rd & 4th was P550,000 each. Last December 29, 1995 at around 3:00 pm, I was surprised to see him at my counter, again, he was asking for money. I was balancing my dollar transaction. But that time, I had delivered my peso cash box to our cashier. He saw the bundle of \$10,000 which was on top of my desk because I was writing the breakdown on my cash count. He wanted me to give it to him & this time he pointed a gun at me and I got so nervous & gave him the dollars.

During this time, in order for me to be balance with (sic) my transactions, I cash out checks (suppose to be for late deposit) & included them in today's clearing. The following day, I validated the deposit slips as cash

deposit xxx.

The accused submits that the letter was inadmissible for being in reality an uncounselled extrajudicial confession, and for not being executed under oath.

The submission lacks persuasion.

The letter was not an extrajudicial confession whose validity depended on its being executed with the assistance of counsel and its being under oath, but a voluntary party admission under Section 26,[23] Rule 130 of the Rules of Court that was admissible against her. An admission, if voluntary, is admissible against the admitter for the reason that it is fair to presume that the admission corresponds with the truth, and it is the admitter's fault if the admission does not.[24] By virtue of its being made by the party himself, an admission is competent primary evidence against the admitter.[25]

Worth pointing out is that the letter was not a confession due to its not expressly acknowledging the guilt of the accused for qualified theft. Under Section 30,[26] Rule 130 of the Rules of Court, a confession is a declaration of an accused acknowledging guilt for the offense charged, or for any offense necessarily included therein.

Nonetheless, there was no need for a counsel to have assisted the accused when she wrote the letter because she spontaneously made it while not under custodial investigation. Her insistence on the assistance of a counsel might be valid and better appreciated had she made the letter while under arrest, or during custodial investigation, or under coercion by the investigating authorities of the Government. The distinction of her situation from that of a person arrested or detained and under custodial investigation for the commission of an offense derived from the clear intent of insulating the latter from police coercion or intimidation underlying Section 12 of Article III (Bill of Rights) of the 1987 Constitution, which provides:

Section 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.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

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

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

To reiterate, the rights under Section 12, *supra*, are available to "any person under investigation for the commission of an offense." The phrase does not cover all kinds of investigations, but contemplates only a situation wherein "a person is already in custody as a suspect, or if the person is the suspect, even if he is not yet deprived in any significant way of his liberty." [27] The situation of the accused was not similar to that of a person already in custody as a suspect, or if the person is the suspect, even if she is not yet deprived in any significant way of his liberty.

5.

Penalty was correctly determined

We quote and adopt with approval the CA's discourse on why the penalty of reclusion perpetua was appropriate

for the offense committed by the accused, to wit:

The foregoing considered, appellant's conviction must perforce be affirmed. The sentence imposed by the Trial Court should, however, be modified.

The Trial Court sentenced the appellant to imprisonment of ten (10) years and one (1) day of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum. The correct penalty, however, should be reclusion perpetua with the accessory penalties of death under Article 40 of the Revised Penal Code.

Article 310 of the Revised Penal Code provides that qualified theft shall be punished by the penalties next higher by two degrees than those specified in Article 309 of the Revised Penal Code. Paragraph (1) of Article 309 states that if the value of the thing stolen exceeds P22,000, the penalty shall be the maximum period of prision mayor in its minimum and medium periods, and one year for each P10,000.00 in excess of P22,000.00, but the total of the penalty which may be imposed shall not exceed twenty years (or reclusion temporal).

Appellant stole US\$10,000.00 or P262,140.00 computed based on the exchange rate on December 29, 1995 when the appropriation took place.

Under Article 309, the basic penalty is prision mayor in its minimum and medium periods to be imposed in the maximum period since the amount stolen exceeded P22,000.00. To determine the additional years of imprisonment prescribed in Article 309 (1), the amount of P22,000.00 should be deducted from P262,140.00, thus, leaving the amount of P240,140.00. The net amount should then be divided by P10,000.00, disregarding any amount below P10,000.00. The result is the incremental penalty of twenty-four (24) years which must then be added to the basic penalty of the maximum period of prision mayor minimum and medium periods. The penalty of prision mayor in its minimum and medium periods has a range of six years (6) and one (1) day to ten (10) years. Its maximum period is eight (8) years, eight (8) months and one (1) day to ten (10) years, and the incremental penalty is twenty-four (24) years. Had appellant committed simple theft, the penalty should have been twenty years of reclusion temporal, the maximum penalty allowable under Article 309, subject to the Indeterminate Sentence Law.

Considering that the theft is qualified by grave abuse of confidence, the penalty is two degrees higher than that specified under Article 309. Under Article 25 of the Revised Penal Code, two degrees higher than reclusion temporal is death. However, Article 74 of the same Code provides that in cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, and if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty.

The Supreme Court held that in such a case, the accused should be meted the penalty of reclusion perpetua for forty years with the accessory penalties of death under Article 40 of the Revised Penal Code.

WHEREFORE, we deny the petition for review on certiorari, and affirm the decision promulgated on July 31, 2003 in CA-G.R. CR No. 24556.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, pp. 54-73; penned by Associate Justice Noel G. Tijam, and concurred in by Associate Justice Portia Aliño-Hormachuelos and Associate Justice Edgardo P. Cruz (retired).

[2] Records, pp. 216-227; penned by Presiding Judge Omar T. Viola.

[3] Id., p. 1.

[4] Rollo, pp. 55-58.

[5] Id., pp. 129-136.

[6] Records, pp. 143-146.

[7] Id., pp. 216-227.

[8] Supra, note 1.

[9] Rollo, pp. 35-36.

[10] People v. Torrefiel, G.R. No. 115431, April 18, 1996, 256 SCRA 369, 379.

[11] TSN, May 5, 1997, pp. 8-9; pp. 12-13.

[12] People v. Batin, G.R. No. 177223, November 28, 2007, 539 SCRA 272.

[13] The information was filed on May 30, 1996, prior to the effectivity on December 1, 2000 of the 2000 Revised Rules of Criminal Procedure.

[14] People v. Chins G.R. No. 177150, November 22, 2007, 538 SCRA 117; People v. Domingo, G.R. No. 177744, November 23, 2007, 538 SCRA 733; People v. Ibanez, G.R. No. 174656, May 11, 2007, 523 SCRA 136.

[15] CA Rollo, p. 98.

[16] Rollo, pp. 68-69.

[17] People v. Flares, G.R. No. 106581, March 3, 1997, 269 SCRA 62; De Guzman v. Sandiganbayan, G.R. No. 103276, April 11, 1996, 256 SCRA 171; Rivera v. People, G.R. No. 163996, June 9, 2005, 460 SCRA 85.

[18] G.R. No. 149382-149383, March 5, 2003, 398 SCRA 642, 653-654.

[19] Supra, note 17.

[20] Section 15. Demurrer to evidence. - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution, (n)

[21] See Mansfield v. Reserve Oil Co., 29 P.2d 491, 492, 38 NM 187.

[22] Folder of Exhibits, pp. 41-42.

[23] Section 26. Admissions of a party. - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (22)

[24] United States v. Ching Po, 23 Phil. 578.

[25] Regalado, Remedial Law Compendium, 2001 Edition, p. 620.

[26] Section 33. Confession. - The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him. (29a)

[27] Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 Ed., p. 413.

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