

ROSARIO V. ASTUDILLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 159734. November 30, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners Rosario "Baby" Astudillo (Rosario) and Filipina "Lina" Orellana (Filipina) via separate petitions for review on certiorari seek a review of the Decision[1] and the Resolution[2] of the Court of Appeals affirming with modification that of the Regional Trial Court of Quezon City, Branch 78[3] (the trial court) finding them guilty of Qualified Theft and denying their Motions for Reconsideration, respectively.

On complaint of Western Marketing Corporation (Western), petitioners were collectively charged with Qualified Theft, along with Flormarie Robel (Flormarie) and Roberto Benitez (Benitez), in Criminal Case No. Q-96-67827, under an Information dated September 9, 1996 reading:

The undersigned accuses FLORMARIE CALAJATE ROBEL, ROBERTO F. BENITEZ, ROSARIO ASTUDILLO a.k.a. "Baby" and FILIPINA ORELLANA Y MACARAEG of the crime of QUALIFIED THEFT as follows:

That during the period comprised from January 1996 to February 1996, the above-named accused, being then employed as relieving cashier/service-in-charge (Flormarie Calajate Robel), supervisor/floor manager (Roberto F. Benitez[]), sales clerks (Rosario Astudillo a.k.a. "Baby" and Filipina Orellana y Macaraeg) at the WESTERN MARKETING CORPORATION, represented by LILY CHAN ONG, and as such had free access to the company premises, materials, supplies and items store[d] thereat, conspiring, confederating together and mutually helping one another, with grave abuse of confidence and intent of gain, and without the consent of the owner thereof, did, then and there wilfully, unlawfully and feloniously take, steal and carry away two (2) booklets of Sales Invoices Nos. from 128351 to 128400 of the said corporation and thereafter use the said invoices in the preparation of fictitious sales and withdrawals of merchandise with the total value of P797,984.00 Philippine Currency, belonging to the said WESTERN MARKETING CORPORATION, to its damage and prejudice.

CONTRARY TO LAW.[4] (Emphasis supplied)

Additionally, petitioners, Benitez and Norberto "Carlo" Javier (Javier) were individually charged also with Qualified Theft in four (4) separate Informations all dated September 9, 1996.

The Information indicting petitioner Rosario, docketed as Criminal Case Nos. Q-96-67829, and that indicting petitioner Filipina, docketed as Q-96-67830, respectively read:

The undersigned accuses ROSARIO ASTUDILLO a.k.a. "Baby" of the crime of QUALIFIED THEFT as follows:

That on or about the period from May 1, 1994 to February 16, 1996, in Quezon City, Philippines, the above-named accused, being then employed as sales representative/clerk at the WESTERN MARKETING

CORPORATION (P. Tuazon Branch), represented by LILY CHAN ONG, and as such had free access to the company cash sales, with grave abuse of confidence and intent of gain, and without the consent of the owner thereof, did, then and there, wilfully, unlawfully and feloniously take, steal and carry away the excess sum/amount between the tag price and discounts price in the sum of P12,665.00, belonging to the said WESTERN MARKETING CORPORATION, to its damage and prejudice in the amount aforementioned.

CONTRARY TO LAW.

x x x

The undersigned accuses FILIPINA ORELLANA Y MACARAEG of the crime of QUALIFIED THEFT, committed as follows:

That on or about the period from May 1, 1994 to January 27, 1996, in Quezon City, Philippines, the above-named accused, being then employed as Sales clerk at the WESTERN MARKETING CORPORATION, represented by LILY CHAN ONG, and as such had free access to the company cash sales, with grave abuse of confidence and intent of gain, and without the consent of the owner thereof, did, then and there, wilfully, unlawfully and feloniously take, steal and carry away the excess sum/amount between the tag price and discount price of each and every items sold by her to company customers, in the sum of P4,755.00, belonging to the said WESTERN MARKETING CORPORATION, to its damage and prejudice in the amount aforementioned.

CONTRARY TO LAW.[5]

Petitioners, Benitez and Javier, with the assistance of their respective counsel, pleaded not guilty during arraignment.[6] Flormarie has remained at large.

By Order of December 10, 1997, Criminal Case No. Q-96-67828, the case against Javier, was dismissed on account of the desistance of the private complainant.[7] The remaining cases against petitioners and Benitez were consolidated for joint trial.

By Decision of May 28, 1998, the trial court found the accused-herein petitioners and Benitez guilty beyond reasonable doubt of Qualified Theft and were accordingly sentenced as follows:

IN CRIMINAL CASE NO. Q-96-67827 –

Accused Roberto F. Benitez, Rosario Astudillo a.k.a. "Baby", and Filipina Orellana y Macaraeg shall each suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the amount of P797,984.00, jointly and severally for their civil liability;

IN CRIMINAL CASE NO. Q-96-67829 –

Accused Rosario Astudillo a.k.a. "Baby", shall suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the amount of P12,665.00 for her civil liability;

IN CRIMINAL CASE NO. Q-96-67830 –

Accused Filipina Orellana y Macaraeg, shall suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the sum of P4,755.00 for her civil liability; and

IN CRIMINAL CASE NO. Q-96-67831 –

Accused Roberto F. Benitez, shall suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the amount of P11,079.00 for his civil liability.

The penalties imposed on all the accused are quite harsh, but as the maxim goes, "Dura Lex Sed Lex", the Court could not impose otherwise.

SO ORDERED.[8] (Emphasis in the original; underscoring supplied)

Petitioners and Benitez elevated their cases on appeal. The Court of Appeals affirmed the trial court's judgment with modification as to the penalties imposed, thus:

WHEREFORE, the decision dated May 28, 1998 of the Regional Trial Court of Quezon City, Branch 78 is AFFIRMED with MODIFICATION.

- In Criminal Case No. Q-96-67827, appellants Roberto Benitez, Rosario Astudillo and Filipina Orellana are found guilty beyond reasonable doubt of qualified theft and are hereby sentenced to suffer the penalty ranging from 10 years and 1 day of prision mayor in its maximum period to 15 years of reclusion temporal as maximum, and to pay to the offended party the amount of P797,984.00, jointly and severally, as reparation for the unrecovered stolen merchandise;

- In Criminal Case No. Q-96-67829, appellant Rosario Astudillo is found guilty beyond reasonable doubt of qualified theft and is sentenced to suffer imprisonment ranging from 10 years and 1 day of prision mayor in its maximum period as minimum to 14 years, 8 months and 1 day of reclusion temporal in its medium period as maximum, and to pay to the offended party amount of P12,665.00 as reparation for the stolen goods.

- In Criminal Case No. Q-96-67830, appellant Filipina Orellana is found guilty beyond reasonable doubt of qualified theft and is sentenced to suffer imprisonment ranging from 4 years, 2 months and 1 day of prision correccional in its maximum period as minimum to 8 years and 1 day of prision mayor in its medium period as maximum and to pay to the offended party the amount of P4,755.00 as reparation for the stolen property;

- In Criminal Case No. Q-96-67831, appellant Roberto Benitez is found guilty beyond reasonable doubt of qualified theft and is sentenced to suffer imprisonment ranging from 6 years and 1 day of prision mayor in its minimum period as minimum to 10 years and 1 day of prision mayor in its maximum period as maximum and to pay to the offended party the amount of P11,079.00 as reparation for the stolen goods.

SO ORDERED.[9] (Emphasis in the original; underscoring supplied)

After petitioners and Benitez's respective Motions for Reconsideration were denied by the Court of Appeals, petitioners filed these separate petitions for review which were, on motion of the Office of the Solicitor General, ordered consolidated.[10]

In her petition, Rosario proffers the following assignment of errors:

THE COURT A QUO GRIEVOUSLY ERRED WHEN IT CONSIDERED AN APOLOGY FOR BREACH OF PROCEDURE AS AN ADMISSION OF A CRIME.

THE COURT A QUO ERRED WHEN IT DEPARTED [FROM] THE NORMAL COURSE OF JUDICIAL PROCEEDING AND CONVICTED PETITIONER OF THE OFFENSE OF THEFT WITHOUT THE ESSENTIAL ELEMENT OF UNLAWFUL TAKING.

THE COURT OF A QUO (sic) GRIEVOUSLY ERRED WHEN IT ABUSED ITS DISCRETION TO ARRIVE AT CONCLUSIONS OF FACTS BY INDECENTLY CONSIDERING AND DISTORTING

EVIDENCE TO CONFORM TO ITS FLAWED CONCLUSION.[11] (Underscoring supplied)

On her part, Filipina raises the following issues:

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT CONVICTING THE PETITIONER FILIPINA ORELLANA Y MACARAEG OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF EVIDENCE

WHETHER OR NOT AN EXTRA-JUDICIAL ADMISSION OBTAINED THROUGH TRICKERY AND SCHEME WITHOUT THE BENEFIT AND ASSISTANCE OF COUNSEL IS A SUFFICIENT GROUND TO CONVICT AN ACCUSED

WHETHER OR NOT CONSPIRACY MAY BE PROVED SIMPLY ON THE GROUND THAT ALL ACCUSED ARE CO-EMPLOYEES AND WORKING IN ONE COMPANY[12] (Underscoring supplied)

From the evidence for the prosecution, the following version is gathered:

Petitioners were hired by Western, a chain of appliance stores, as salespersons at its branch at P. Tuazon Boulevard in Cubao, Quezon City. Benitez and Flormarie were hired as floor manager and service-in-charge/cashier-reliever, respectively, at the same branch of Western.[13]

On February 21, 1996, in the course of preparing the January monthly sales report of the P. Tuason branch of Western, Branch Accountant Marlon Camilo (Camilo) noticed that the computer printout of the monthly sales report revealed a belated entry for Cash Sales Invoice No. 128366. Upon verification from Western's head office, Camilo learned that the branch received the booklet containing 50 cash sales invoices to which Invoice No. 128366 formed part.

Camilo then confirmed that the booklet of sales invoices bearing numbers 128351 up to 128400 was missing. And he noted that the daily cash collection report did not reflect any remittance of payments from the transactions covered by the said invoices.

Some cash sales invoices were later recovered. From recovered Invoice No. 128366, Camilo found out that Flormarie was the one who filled it up and received the payment reflected therein.

From recovered Invoice Nos. 128358 and 128375, Camilo found out that the goods covered thereby were missing. Concluding that the transactions under the said invoices were made but no payment was remitted to Western, Camilo reported the matter to Ma. Aurora Borja (Aurora), the branch assistant manager.

Benitez soon approached Camilo and requested him not to report the matter to the management, he cautioning that many would be involved.

Aurora and Camilo later met with Benitez, Filipina, cashiers Rita Lorenzo (Rita) and Norma Ricafort (Norma) during which Benitez and Filipina pleaded with Camilo not to report the matter to the management. Flormarie, who called on Camilo by telephone, made a similar plea as she admitted to stealing the missing booklet of invoices, she explaining that her father was sick and had to undergo medical operation, and offering to pay for the goods covered thereby.[14]

In the meantime, Flormarie had gone absent without leave.

Aurora eventually reported the case of the missing invoices and the shortage of cash sales collection to Western's branch manager Lily Chan Ong (Lily).[15]

In a subsequent meeting with Lily, Filipina admitted having brought home some appliances while Benitez gave a handwritten statement reading:[16]

Ako si Roberto F. Benitez ay humihingi po ako ng tawad kay Mrs. Lily Ong at Western Marketing Corp. Ang mga kasalanan ako po ay:

- 1) Ang pagkuha ng Promo na dapat ay para sa Customer.
- 2) Ang paggamit ng gift check na para rin sa Customer ang kinukuha ko at ako ang gumagamit.
- 3) Ang paggamit na rin sa Pera na tinatawag na Short-Over ay amin ding ginagawa. Example nagbayad ang Customer ng 9000 and C.P. 8,900 and 9,000 ay nasulat sa original na INV.
- 4) Ang pagkuha na rin ng mga Product tulad ng sumusunod, na ako nagplano at si Ate Lina.

Kay Ate Lolit Tiffin Carrier
Cookware Set 7 pcs.

Ate Lina Cookware Set 7 pcs.

Norma Cookware Set 7 pcs.
Airpot Lemon

Robert National Elec. Stove HNK-211
Rice Bowl

Ito lahat ay nilabas namin ng linggo 02-18-96 ng gabi. Ako po ay nangangako na hindi na ito uulitin ang lahat ng mga kasalanan sa Western ay kay Mrs. Lily Ong at Pinapangako ko po na Sumpa man kasama ang pamilya at salamat din po dahil ako ay pinatawad nila at binigyan pa ng isang pagkakataon. Maraming maraming salamat po.[17] (Emphasis and underscoring supplied)

In a still subsequent meeting with Lily, Filipina made a written statement in the former's presence reading:

Ako po si Lina M. Orellana na nangangako kay Ate Lily na hinding-hindi ko na uulitin iyong naglalabas ng mga items tulad ng cookware set at casserole na ang mga kasama ko po rito ay sina Lolit, Norma, Robert na isinagawa namin. Na kami po si Robert ang nagsabi kay Lolit na maglabas ng stock pero bago po namin ginagawa iyon nagsabi po kami kay Lolit na sumagot naman ng ng oo pero kami po ni Robert and nagkumbinsi sa dalawa. Kung mauulit pa ho ito kung anuman po ang gusto ni Ma'm Lily na gawin sa akin ay lubos ko pongatangapin.[18] (Underscoring supplied)

Also in a meeting with Lily, Rosario, who was earlier implicated by Flormarie's husband in his telephone conversation with Aurora,[19] wrote:

Mam Lily,

Sana ho Ate Lily patawarin ninyo ako sa nagawa kong kasalanan, regarding sa "Short-over". Siguro ho nagawa ko lang ho 'yon sa pakikisama sa kanila, sa mga kasamahan ko dito sa Nuestra, alam ko ho na mali 'yon kaya pinagsisisihan ko ho 'yon. Sana ho mapatawad ninyo ako sa nagawa kong kasalan.
'Yun pong tungkol sa kaso ni Marie, wala ho akong alam don. Kumare ko nga ho sya pero yung pagnanakaw niyang ginawa wala akong kinalaman don. Kahit ho siguro magkautang-utang ako hindi ko magagawa 'yon. Inuulit ko ho, sana ho mapatawad ninyo uli ako sa nagawa kong kasalanan at pinapangako ko ho na hinding-hindi ko na uulitin.

Maraming salamat ho,
(Sgd.)Baby Astudillo

P.S. 'yun ho palang perang na-oover naming, pinaghahatian po namin nila Rita at ni Marie.[20] (Underscoring supplied)

Still in a separate meeting with Lily and her siblings on one hand, and Flormarie and her husband on the other, Flormarie wrote what she knew of the incident as follows:

Ito ang nalalaman ko kung paanong nangyari ito sa loob ng tindahan ng Western Mktg. P. Tuazon Branch.

***SHORT-OVER**

Ang tag price, kung ang customer ay hindi tumawad, binabago na lang ang presyo sa duplicate copy and then kinukuha na lang sa cashier ang pera tapos naghahati-hati na lang si robert, baby, lina, lolit, Rita at Marie, Norma, Fe.

x x x

***INVOICE**

Ito ay itinuro sa akin ni Kuya Robert, kukunin ko ang invoice at pagkatapos binigyan niya ako ng (3 resibo series) at hindi ko na po alam kung anong ginawa na niya sa invoice.

Ang paraan magresibo ako tatatakan ko ng paid kasama kung sino ang taong maglalabas ng unit tapos ibebenta ko na yong unit yung pera kinukuha ko na bibigyan ko lang siya ng kahit magkanong amount kung sino yong taong inutusan ko.[21] (Underscoring supplied)

Flormarie, in the company of her sister Delma and Lily, subsequently appeared before a notary public to execute a similar statement reading:

x x x x

- Ako ngayon ay kusang loob na lumapit sa Western upang humingi ng kapatawaran sa aking mga nagawa at upang makipagkasundo sa isang maayos na pagbabayad sa mga halagang aking nakuha sa Western at mahalaga sa lahat, upang isiwalat ang mga taong kasangkot sa katiwalianang ito at mga paraan ng paggawa nito.

- Halos lahat ng mga kawani ng tindahan ay kasangkot sa mga sumusunod na katiwalian:

3.1. Short-Over — Ito ay ang pagtatala ng mas mababang halaga ng paninda sa mga "duplicate copies" ng resibo kapag ang kustomer ay hindi tumawad sa "tag price" at nagbayad ng "cash". Ang sobrang halaga ay pinaghahatian namin nina ROBERT BENITEZ ("Robert"); ROSARIO ALTUDILLO ("Baby"); FILIPINA ORELLANA ("Lina"); LOLIT BORJA ("Lolit"); RITA LORENZO ("Rita"); NORMA RICAFORT ("Norma") at FE CABIGAN ("Fe").

x x x x

3.3. INVOICING — Sa pamamagitan ng mga resibong na may tatak na "paid" na ibinibigay ni Robert sa aking nailalabas ko ang mga paninda na akin namang naibebenta.[22]

x x x x (Emphasis and underscoring supplied)

Flormarie and her sister, together with Lily, later executed a statement before Cubao SPO1 Jose Gil Gregorio, reading:

TANONG:

Ayon kay MARLON CAMILO, Western Marketing Corp Branch Accountant nadiskubre niya ang pagkawala ng isang booklet ng Sales Cash Invoice (50pcs.) na may numerong 128351 to 128400 nitong mga nakaraang araw may kinalaman ka ba sa nasabing pangyayari?

SAGOT:

Opo.

T

:

Kung mayroon kang kinalaman sa nasabing pangyayari ito ba ay kusang loob mong ginawa?

S

:

Itinuro lang po ito sa akin.

T

:

Ano ang iyong ginawa?

S

:

Ako po ang kumuha noong nawawalang isang booklet ng Cash Sales Invoice sa turo ni ROBERT BENITEZ na Sales Supervisor sa Western Marketing Corp.

x x x x

T

:

Sa tatlong series ng Cash Sales Invoice na napunta sa iyo ano ang iyong ginawa?

S

:

Ginamit ko po ito sa paglalabas ng mga items/unit sa Western Marketing Corp.

x x x x

T

:

Sa maikling salaysay, ikuwento mo nga sa akin kung papaano mo isinagawa ang iyong pagnanakaw sa pag-gamit ng mga Cash Sales Invoice?

S

:

Ganito po ang ginawa ko, iniuwi ko sa aming bahay yung tatlong series ng resibo na ibinigay sa akin ni ROBERT BENITEZ at tinuruan po niya ako na sulatan ko yung mga resibo ng mga items na gusto kong ilabas, at pagkatapos po ay ibinalik ko ito sa Western Marketing Corp at binigay ko ito kay ROBERT BENITEZ, at ang sabi niya sa akin ay siya na raw ang bahala na magpalabas noong mga items na aking isinulat sa resibo.

x x x x

T

:

Bukod kay ROBERT BENITEZ may mga tao bang karamay sa naganap na transaksyon?

S

:

Mayroon po.

T

:

Sino-sino ito?

S

:

Sina LINA ORELLANA po, Sales Lady po, ROSARIO ASTUDILLO, sales lady.

T

:

Sa iyong pagkakaalam, ano ang kanilang mga partisipasyon na naganap na transaksyon?

S

: Si LINA ORELLANA po ang sales lady, at siya rin ang may pirma doon sa resibo, at ganoon din po itong si ROSARIO ASTUDILLO.

x x x x

T

:

Magkano naman ang ibinibigay sa iyo ni ROBERT BENITEZ kapag nailabas ng yung mga items doon sa resibo na iyong ginawa?

S :

Hindi ko na po matandaan basta pinapartihan niya ako at yung dalawang sales lady.[23] (Emphasis and underscoring supplied)

In an inventory of stocks conducted at the branch office of Western, several other appliances were found missing as were unauthorized deductions from the cash collections.[24] The total missing merchandise was valued at P797,984.00 as reflected in the inventory report.[25] And discrepancies between the actual sales per cash sales invoice and the cash remittance to the company in the sum of P34,376.00 for the period from January 1994 to February 1996[26] were also discovered, prompting Western to initiate the criminal complaints for Qualified Theft.

Both petitioners raise as issue whether the employees' extra-judicial admissions taken before an employer in the course of an administrative inquiry are admissible in a criminal case filed against them.

Petitioners posit in the negative. They argue that as their extra-judicial statements were taken without the assistance of counsel, they are inadmissible in evidence, following Section 12, Article III of the 1987 Constitution.[27]

It bears noting, however, that when the prosecution formally offered its evidence, petitioners failed to file any

objection thereto including their extra-judicial admissions.[28] At any rate, this Court answers the issue in the affirmative. *People v. Ayson*[29] is instructive:

In *Miranda*, Chief Justice Warren summarized the procedural safeguards laid down for a person in police custody, "in-custody interrogation" being regarded as the commencement of an adversary proceeding against the suspect.

He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise those rights must be afforded to him throughout the interrogation. After such warnings have been given, such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer or make a statement. But unless and until such warnings and waivers are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against him.

The objective is to prohibit "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statement without full warnings of constitutional rights."

The rights above specified, to repeat, exist only in "custodial interrogations," or "in-custody interrogation of accused persons." And, as this Court has already stated, by custodial interrogation is meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." [30] (Emphasis and underscoring supplied)

Ayson adds:

The employee may, of course, refuse to submit any statement at the investigation, that is his privilege. But if he should opt to do so, in his defense to the accusation against him, it would be absurd to reject his statements, whether at the administrative investigation, or at a subsequent criminal action brought against him, because he had not been accorded, prior to his making and presenting them, his "Miranda rights" (to silence and to counsel and to be informed thereof, etc) which, to repeat, are relevant in custodial investigations.[31]

People v. Tin Lan Uy, Jr. [32] is similarly instructive:

Clearly, therefore, the rights enumerated by the constitutional provision invoked by accused-appellant are not available before government investigators enter the picture. Thus we held in one case (*People v. Ayson*, [supra]) that admissions made during the course of an administrative investigation by Philippine Airlines do not come within the purview of Section 12. The protective mantle of the constitutional provision also does not extend to admissions or confessions made to a private individual, or to a verbal admission made to a radio announcer who was not part of the investigation, or even to a mayor approached as a personal confidante and not in his official capacity. (Emphasis and underscoring supplied)

The Court of Appeals did not thus err in pronouncing that petitioners were not under custodial investigation to call for the presence of counsel of their own choice, hence, their written incriminatory statements are admissible in evidence.

The extra-judicial confession[33] before the police of Flormarie (who, as earlier stated, has remained at large) in which she incriminated petitioners bears a different complexion, however, as it was made under custodial investigation. When she gave the statement, the investigation was no longer a general inquiry into an unsolved crime but had begun to focus on a particular suspect. The records show that Camilo had priorly reported the thievery to the same police authorities and identified Flormarie and Benitez as initial suspects.

It is always incumbent upon the prosecution to prove at the trial that prior to in-custody questioning, the confessant was informed of his constitutional rights. The presumption of regularity of official acts does not

prevail over the constitutional presumption of innocence. Hence, in the absence of proof that the arresting officers complied with these constitutional safeguards, extrajudicial statements, whether inculpatory or exculpatory, made during custodial investigation are inadmissible and cannot be considered in the adjudication of a case. In other words, confessions and admissions in violation of Section 12 (1), Article III of the Constitution are inadmissible in evidence against the declarant and more so against third persons. This is so even if such statements are gospel truth and voluntarily given.[34] (Emphasis and underscoring supplied)

Petitioners at all events argue that their written statements were obtained through deceit, promise, trickery and scheme, they claiming that Lily dictated to them their contents. There is nothing on record, however, buttressing petitioners' claim other than their self-serving assertion. The presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and conscience[35] such that it is presumed to be voluntary until the contrary is proved thus stands.[36]

The circumstances surrounding the execution of the written admissions likewise militate against petitioners' bare claim. Petitioners admittedly wrote their respective letters during office hours in Lily's office which was located in the same open booth or counter occupied by the cashier and credit card in-charge.[37] And this Court takes note of the observation of the trial court that petitioners' written notes were "neatly written in Tagalog, and not in broken Tagalog as spoken by Lily Ong".[38]

In another vein, Rosario labels her written statement as a mere "apology for breach of procedure".[39] Her resort to semantics deserves scant consideration, however. A cursory reading of her letter reveals that she confessed to the taking of "short-over."

There is a "short-over" when there is a discrepancy between the actual amount collected appearing in the yellow (warehouse) copy and the remitted amount appearing in the blue (accounting) copy.[40]

In criminal cases, an admission is something less than a confession. It is but a statement of facts by the accused, direct or implied, which do not directly involve an acknowledgment of his guilt or of his criminal intent to commit the offense with which he is bound, against his interests, of the evidence or truths charged. It is an acknowledgment of some facts or circumstances which, in itself, is insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt. A confession, on the other hand, is an acknowledgment, in express terms, of his guilt of the crime charged.[41]

The issue on the admissibility of petitioners' respective extra-judicial statements aside, an examination of the rest of the evidence of the prosecution does not set petitioners free.

The elements of the crime of Theft as provided for in Article 308 of the Revised Penal Code are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[42]

Theft becomes qualified when any of the following circumstances is present: (1) the theft is committed by a domestic servant; (2) the theft is committed with grave abuse of confidence; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[43]

Cashier Rita testified in a detailed and categorical manner how the petitioners took the alleged amounts of "short-over" deducted from the sum of cash collections. The tampered invoices presented by the prosecution which glaringly show the variance in the amounts corroborate Rita's claim.

Rosario contends, however, that there was no "unlawful taking" since the amounts of "short-over" did not belong to Western. The argument does not lie. The "excess" sums formed part of the selling price and were paid to, and received by, Western. The discrepancy in the amounts came about on account of the alteration in the copies of the invoices which should have faithfully reflected the same amount paid by the customer.

As for petitioners' claim of entitlement to the "excess" amounts as salespersons' commission, it was not established in evidence.

Even assuming that the "short-over" was intended to defray sundry expenses, it was not incumbent upon the salespersons to claim them and automatically apply them to the miscellaneous charges. It was beyond the nature of their functions. The utilization of the "short-over" was not left to the discretion of the salespersons. The element of unlawful taking was thus established.

A further review of the nature of petitioners' functions shows, however, that the element of grave abuse of confidence is wanting in the case.

Q

:

As an accountant employee since June 1995, Mr. Witness, you are familiar that in the procedure in any particular branch of Western Marketing Corporation, are you aware if somebody buys an item from one store, do you know the flow of this sale?

A

:

Yes, sir.

Q

:

In fact, in the store there are employees which are assigned with specific duties or functions, is it not?

A

:

Yes, sir.

Q

:

Like for instance, let's take the case of Filipina Orellana. Her function is merely to entertain customers who go to the store and intend to buy one of the items that are displayed, is it not?

A

:

Yes, sir.

Q

:

So, if this customer is resolved to buy one item, Filipina Orellana as a sales clerk, all she has to do is to refer the particular customer to another employee of the company, is that correct?

A

:

Yes, sir.

Q

:

Now, you have also employees who are preparing invoices, they are called invoicers, is it not?

A

:

Yes, sir.

Q

:

So when Filipina Orellana refers this customer to the invoicer, the invoicer now will take over from that function of Filipina Orellana after referring this customer?

A

:

Yes, sir.

Q

:

And this invoicer now will refer the invoice for this particular item for payment to the cashier of the company, is it not?

A

:

Yes, sir.

Q

:

And it is the cashier who will receive the payment from this customer?

A

:

Yes, sir.

And in fact, the customer or the cashier will receive the exact amount of payment as reflected in the invoice that was prepared by the invoicer, is it not?

Yes, sir.

Q

:

From that point up to the payment, Filipina Orellana has no more hand in that particular transaction, her function is only to entertain and refer the customer for sales purposes, that is correct?

A

:

Yes, sir.[44] (Emphasis, underscoring and italics supplied)

Mere circumstance that petitioners were employees of Western does not suffice to create the relation of confidence and intimacy that the law requires.[45] The element of grave abuse of confidence requires that there be a relation of independence, guardianship or vigilance between the petitioners and Western.[46] Petitioners were not tasked to collect or receive payments. They had no hand in the safekeeping, preparation and issuance of invoices. They merely assisted customers in making a purchase and in demonstrating the merchandise to prospective buyers.[47] While they had access to the merchandise, they had no access to the cashier's booth or to the cash payments subject of the offense.

Lily conceded that petitioners were merely tasked to "assist in the sales from day to day"[48] while Camilo admitted that the cashier is the custodian of the cash sales invoices and that no other person can handle or access them.[49] The limited and peculiar function of petitioners as salespersons explains the lack of that fiduciary relationship and level of confidence reposed on them by Western, which the law on Qualified Theft requires to be proven to have been gravely abused. Mere breach of trust is not enough. Where the relationship did not involve strict confidence, whose violation did not involve grave abuse thereof, the offense committed is only simple theft.[50] Petitioners should therefore be convicted of simple theft, instead of Qualified Theft.

On Criminal Case No. Q-96-67827 respecting petitioners' collective guilt in taking away merchandise by making it appear that certain items were purchased with the use of stolen cash sales invoices:

It is settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. To effectively serve as a basis for conviction, conspiracy must be proved as convincingly as the criminal act. Direct proof is not absolutely required for the purpose.

A review of the inference drawn from petitioners' acts before, during, and after the commission of the crime to indubitably indicate a joint purpose, concert of action and community of interest is thus in order.[51]

In Rosario's case, the Office of the Solicitor General made a sweeping conclusion that the extent of her participation in the act of taking merchandise need not be specified since she attributed her other act of taking "short-over" to "pakikisama" or companionship.[52] The conclusion does not persuade.

Mere companionship does not establish conspiracy.[53] As indicated early on, there were two different sets of imputed acts, one individual and the other collective. Rosario's admission was material only to her individual guilt as she referred only to the "short-over". The wording of her admission cannot be construed to extend to the other offense charging conspiracy under which no overt act was established to prove that Rosario shared with, and concurred in, the criminal design of taking away Western's merchandise.

The prosecution relied on Aurora's statement that Flormarie's husband mentioned Rosario as among those involved in the anomaly.[54] Under the hearsay evidence rule, however, a witness can testify only to those facts

which he knows of his personal knowledge, that is, those which are derived from his own perception, except as otherwise provided in the Rules.[55]

Aurora testified that she witnessed Filipina, along with Benitez, in inter alia hiring third persons to pose as customers who received the items upon presenting the tampered invoice.[56]

Filipina in fact gave a written statement acknowledging her own act of asporting the merchandise. The rule is explicit that the act, declaration or omission of a party as to a relevant fact may be given in evidence against him.[57] 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.[58]

Moreover, Filipina's statement dovetailed with Benitez's admission, which was corroborated by Flormarie's confessions.[59] In cases alleging conspiracy, an extra-judicial confession is admissible against a co-conspirator as a circumstantial evidence to show the probability of participation of said co-conspirator in the crime committed.[60]

Except with respect to Rosario, then, this Court finds well-taken the trial court's observation that the admissions were full of substantial details as to how the accused conspired to commit the criminal acts and as to how they manipulated the sales transactions at Western to effect and consummate the theft of the goods.

In fine, insofar as Filipina is concerned, a thorough evaluation of the evidence warrants the affirmance of her guilt beyond reasonable doubt of having conspired with Benitez et al.

On the imposition of the correct penalty, *People v. Mercado*[61] is instructive. In the determination of the penalty for Qualified Theft, note is taken of the value of the property stolen, which is P797,984.00. Since the value exceeds P22,000.00, the basic penalty is prision mayor in its minimum and medium periods to be imposed in the maximum period — Eight (8) Years, Eight (8) Months and One (1) Day to Ten (10) Years of prision mayor.

To determine the additional years of imprisonment, the amount of P22,000.00 is deducted from P797,984.00, which yields a remainder of P775,984.00. This amount is then divided by P10,000.00, disregarding any amount less than P10,000.00. The end result is that 77 years should be added to the basic penalty.

The total imposable penalty for simple theft should not exceed 20 years, however.

As for the penalty for Qualified Theft, it is two degrees higher than that for Simple Theft, hence, the correct penalty is reclusion perpetua.

WHEREFORE, the Decision of the Court of Appeals dated December 18, 2002 is MODIFIED.

In Criminal Case No. Q-96-67829, petitioner ROSARIO V. ASTUDILLO is found guilty beyond reasonable doubt of Simple Theft, and is sentenced to suffer an indeterminate penalty ranging from Two (2) Years, Four (4) Months and One (1) Day of prision correccional in its medium and maximum periods as minimum, to Seven (7) Years, Four (4) Months and One (1) Day of prision mayor in its minimum and medium periods as maximum, and to pay to the offended party the amount of P12,665.00 as civil liability.

In Criminal Case No. Q-96-67830, petitioner FILIPINA M. ORELLANA is found guilty beyond reasonable doubt of Simple Theft, and is sentenced to suffer an indeterminate penalty ranging from Two (2) Months, and One (1) Day of arresto mayor in its medium and maximum periods as minimum, to One (1) Year, Eight (8) Months and Twenty-One (21) Days of prision correccional in its minimum and medium periods as maximum, and to pay to the offended party the amount of P4,755.00 as civil liability.

In Criminal Case No. Q-96-67827, petitioner ROSARIO V. ASTUDILLO is acquitted.

In all other respects, the assailed Decision is affirmed except that petitioner FILIPINA M. ORELLANA is sentenced to suffer the penalty of reclusion perpetua with the accessory penalties under Article 40 of the Revised Penal Code.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] CA-G.R. CR No. 22521, dated December 18, 2002. Per Associate Justice Eliezer De Los Santos, with the concurrence of Justices Oswaldo D. Agcaoili and Regalado E. Maambong, rollo, pp. 85-104.

[2] CA-G.R. CR No. 22521, dated August 13, 2003. Per Associate Justice Eliezer De Los Santos, with the concurrence of Justices Roberto A. Barrios and Regalado E. Maambong, id. at 106.

[3] Decision dated May 28, 1998 penned by Judge Percival Mandap Lopez.

[4]Records, pp. 1-2.

[5]Id. at 8-11.

[6] Id. at 166, 191 & 200.

[7]Id. at 305.

[8]Id. at 378-379.

[9]Rollo (G.R. No. 159734), pp. 103-104; (G.R. No. 159745), pp. 174-175.

[10]Id. at 123; Id. at 223-A.

[11]Rollo (G.R. No. 159734), pp. 15-16.

[12] Rollo (G.R. No. 159745), p. 10.

[13] Transcript of Stenographic Notes (TSN), March 3, 1997, pp. 4-7.

[14]Exhibits "I"-"K"; TSN, May 5, 1997, pp. 10-11; May 19, 1997, pp. 24-25.

[15] TSN, March 3, 1997, p. 9; October 27, 1997, p. 5.

[16]TSN, March 3, 1997, pp. 13-16; January 28, 1998, pp. 19-20.

[17]Exhibit "B".

[18] Exhibit "C".

[19] TSN, March 3, 1997, pp. 17-20; April 14, 1997, p. 11; October 27, 1997, pp. 7-8, 15-18.

[20]Exhibit "D".

[21] Exhibit "E".

[22] Exhibit "F".

[23] Exhibit "G".

[24] TSN, March 3, 1997, pp. 17, 30; April 14, 1997, at 5.

[25]Exhibit "U".

[26] Exhibit "V".

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

[28] Records, p. 303. Objection to evidence cannot be raised for the first time on appeal (People v. Uy, G.R. No. 128046, March 7, 2000, 327 SCRA 335).

On the other hand, the pieces of documentary evidence for defense were admitted except for Exhibit "5-Orellana" for failure to comply with the best evidence rule.

[29]G.R. No. 85215, July 7, 1989, 175 SCRA 216.

[30] Id., pp. 229-230.

[31] Id., p. 236.

[32] G.R. No. 157399, November 17, 2005, 475 SCRA 248, 262.

[33]Exhibit "G".

[34] People v Figueroa, G.R. No. 134056, July 6, 2000, 335 SCRA 249, 262.

[35] People v. Montiero, G.R. No. 110106, July 31, 1995, 246 SCRA 786.

[36] People vs. Ruelan, G.R. No. 106152, April 19, 1994, 231 SCRA 650.

[37] TSN, April 14, 1997, pp. 6-7, 14-15, 29-30; December 3, 1997, pp. 14-15; January 14, 1998, pp. 13-15; January 28, 1998, pp. 5-6, 12, 16, 19-20.

[38] Rollo (G.R. No. 159734), p. 82; (G.R. No. 159745), p. 60; TSN, January 28, 1998, pp. 17-19.

[39] Rollo (G.R. No. 159734), pp. 16-17.

[40]Exhibit "V"—V-5"; TSN, May 19, 1997, p. 25.

[41] People v. Buntag, G.R. No. 123070, April 14, 2004, 427 SCRA 180, 190-191.

[42] People v. Sison, G.R. No. 123183, January 19, 2000, 322 SCRA 345, 363-364.

[43] Id., p. 364.

[44] TSN, May 5, 1997, pp. 38-39.

[45]Cf. Cariaga v. Court of Appeals, G.R. No. 143561, June 6, 2001, 358 SCRA 583.

[46] Vide People v. Koc Song, 63 Phil. 369 (1936).

[47] Rollo (G.R. No. 159745), p. 9; (G.R. No. 159745), pp. 12-13.

[48]TSN, March 3, 1997, p. 76.

[49] TSN, May 5, 1997, p. 12.

[50]AQUINO, RAMON C., THE REVISED PENAL CODE, Book II, p. 1532.

[51]See *People v. Magallano*, G.R. No. 114872, January 16, 1997, 266 SCRA 305.

[52] *Rollo* (G.R. No. 159745), pp. 211-212.

[53] *People v. Leaño*, G.R. No. 138886, October 9, 2001, 366 SCRA 774.

[54] Exhibit "BB"; TSN, October 27, 1997, pp.7-8.

[55]RULES OF COURT, Rule 130, Sec. 36

[56]Exhibit "BB".

[57] *Supra* note 55, Sec 26.

[58]*Id.*, Sec. 33.

[59] Exhibits "E" & "F".

[60] See *People vs. Tizon*, G.R. Nos. 133228-31, July 30, 2002, 385 SCRA 364.

"The general rule is that the extrajudicial confession or admission of one accused is admissible only against the said accused but is inadmissible against the other accused. The same rule applies if the extrajudicial confession is made by one accused after the conspiracy has ceased. However, if the declarant/admitter repeats in court his extrajudicial confession during trial and the other accused is accorded the opportunity to cross-examine the admitter, such confession or admission is admissible against both accused. The erstwhile extrajudicial confession or admission when repeated during the trial is transposed into judicial admissions." *People v. Buntag*, *supra* note 45, at 190. (Italics supplied)

"[B]y repeating his confession in court, Galvante converted it into a judicial confession which, having been allowed by the trial court, eliminated the need for assistance of counsel which is required in extrajudicial confessions. Furthermore, even in extrajudicial confessions which under jurisprudential doctrines have been held to be generally binding upon the confessant and not against his co-accused, Galvante's confession would readily fall into the exceptions to that rule since appellants are charged as co-conspirators and said confession is used only as a corroborating evidence, or as circumstantial evidence to show the probability of participation by the co-conspirator, or is corroborated by other evidence of record." *People vs. Balisteros*, G.R. No. 110289, October 7, 1994, 237 SCRA 499, 515-516. (Italics supplied)

[61]G.R. No. 143676, February 19, 2003, 397 SCRA 746, 758, citing *People v. Cañales*, 297 SCRA 667 (1998).

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