

PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. TERESITA PUIG AND ROMEO PORRAS, RESPONDENT.

G.R. No. 173654-765. August 28, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review under Rule 45 of the Revised Rules of Court with petitioner People of the Philippines, represented by the Office of the Solicitor General, praying for the reversal of the Orders dated 30 January 2006 and 9 June 2006 of the Regional Trial Court (RTC) of the 6[th] Judicial Region, Branch 68, Dumangas, Iloilo, dismissing the 112 cases of Qualified Theft filed against respondents Teresita Puig and Romeo Porras, and denying petitioner's Motion for Reconsideration, in Criminal Cases No. 05-3054 to 05-3165.

The following are the factual antecedents:

On 7 November 2005, the Iloilo Provincial Prosecutor's Office filed before Branch 68 of the RTC in Dumangas, Iloilo, 112 cases of Qualified Theft against respondents Teresita Puig (Puig) and Romeo Porras (Porras) who were the Cashier and Bookkeeper, respectively, of private complainant Rural Bank of Pototan, Inc. The cases were docketed as Criminal Cases No. 05-3054 to 05-3165.

The allegations in the Informations^[1] filed before the RTC were uniform and pro-forma, except for the amounts, date and time of commission, to wit:

INFORMATION

That on or about the 1[st] day of August, 2002, in the Municipality of Pototan, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, above-named [respondents], conspiring, confederating, and helping one another, with grave abuse of confidence, being the Cashier and Bookkeeper of the Rural Bank of Pototan, Inc., Pototan, Iloilo, without the knowledge and/or consent of the management of the Bank and with intent of gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the sum of FIFTEEN THOUSAND PESOS (P15,000.00), Philippine Currency, to the damage and prejudice of the said bank in the aforesaid amount.

After perusing the Informations in these cases, the trial court did not find the existence of probable cause that would have necessitated the issuance of a warrant of arrest based on the following grounds:

(1)

the element of 'taking without the consent of the owners' was missing on the ground that it is the depositors-clients, and not the Bank, which filed the complaint in these cases, who are the owners of the money allegedly taken by respondents and hence, are the real parties-in-interest; and

(2)

the Informations are bereft of the phrase alleging "dependence, guardianship or vigilance between the

respondents and the offended party that would have created a high degree of confidence between them which the respondents could have abused."

It added that allowing the 112 cases for Qualified Theft filed against the respondents to push through would be violative of the right of the respondents under Section 14(2), Article III of the 1987 Constitution which states that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him. Following Section 6, Rule 112 of the Revised Rules of Criminal Procedure, the RTC dismissed the cases on 30 January 2006 and refused to issue a warrant of arrest against Puig and Porras.

A Motion for Reconsideration[2] was filed on 17 April 2006, by the petitioner.

On 9 June 2006, an Order[3] denying petitioner's Motion for Reconsideration was issued by the RTC, finding as follows:

Accordingly, the prosecution's Motion for Reconsideration should be, as it hereby, DENIED. The Order dated January 30, 2006 STANDS in all respects.

Petitioner went directly to this Court via Petition for Review on Certiorari under Rule 45, raising the sole legal issue of:

WHETHER OR NOT THE 112 INFORMATIONS FOR QUALIFIED THEFT SUFFICIENTLY ALLEGE THE ELEMENT OF TAKING WITHOUT THE CONSENT OF THE OWNER, AND THE QUALIFYING CIRCUMSTANCE OF GRAVE ABUSE OF CONFIDENCE.

Petitioner prays that judgment be rendered annulling and setting aside the Orders dated 30 January 2006 and 9 June 2006 issued by the trial court, and that it be directed to proceed with Criminal Cases No. 05-3054 to 05-3165.

Petitioner explains that under Article 1980 of the New Civil Code, "fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loans." Corollary thereto, Article 1953 of the same Code provides that "a person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality." Thus, it posits that the depositors who place their money with the bank are considered creditors of the bank. The bank acquires ownership of the money deposited by its clients, making the money taken by respondents as belonging to the bank.

Petitioner also insists that the Informations sufficiently allege all the elements of the crime of qualified theft, citing that a perusal of the Informations will show that they specifically allege that the respondents were the Cashier and Bookkeeper of the Rural Bank of Pototan, Inc., respectively, and that they took various amounts of money with grave abuse of confidence, and without the knowledge and consent of the bank, to the damage and prejudice of the bank.

Parenthetically, respondents raise procedural issues. They challenge the petition on the ground that a Petition for Review on Certiorari via Rule 45 is the wrong mode of appeal because a finding of probable cause for the issuance of a warrant of arrest presupposes evaluation of facts and circumstances, which is not proper under said Rule.

Respondents further claim that the Department of Justice (DOJ), through the Secretary of Justice, is the principal party to file a Petition for Review on Certiorari, considering that the incident was indorsed by the DOJ.

We find merit in the petition.

The dismissal by the RTC of the criminal cases was allegedly due to insufficiency of the Informations and, therefore, because of this defect, there is no basis for the existence of probable cause which will justify the issuance of the warrant of arrest. Petitioner assails the dismissal contending that the Informations for Qualified Theft sufficiently state facts which constitute (a) the qualifying circumstance of grave abuse of confidence; and (b) the element of taking, with intent to gain and without the consent of the owner, which is the Bank.

In determining the existence of probable cause to issue a warrant of arrest, the RTC judge found the allegations in the Information inadequate. He ruled that the Information failed to state facts constituting the qualifying circumstance of grave abuse of confidence and the element of taking without the consent of the owner, since the owner of the money is not the Bank, but the depositors therein. He also cites *People v. Koc Song*,^[4] in which this Court held:

There must be allegation in the information and proof of a relation, by reason of dependence, guardianship or vigilance, between the respondents and the offended party that has created a high degree of confidence between them, which the respondents abused.

At this point, it needs stressing that the RTC Judge based his conclusion that there was no probable cause simply on the insufficiency of the allegations in the Informations concerning the facts constitutive of the elements of the offense charged. This, therefore, makes the issue of sufficiency of the allegations in the Informations the focal point of discussion.

Qualified Theft, as defined and punished under Article 310 of the Revised Penal Code, is committed as follows, viz:

ART. 310. Qualified Theft. - The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)

Theft, as defined in Article 308 of the Revised Penal Code, requires the physical taking of another's property without violence or intimidation against persons or force upon things. The elements of the crime under this Article are:

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

To fall under the crime of Qualified Theft, the following elements must concur:

- 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.

On the sufficiency of the Information, Section 6, Rule 110 of the Rules of Court requires, inter alia, that the information must state the acts or omissions complained of as constitutive of the offense.

On the manner of how the Information should be worded, Section 9, Rule 110 of the Rules of Court, is enlightening:

Section 9. Cause of the accusation. The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is evident that the Information need not use the exact language of the statute in alleging the acts or omissions complained of as constituting the offense. The test is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly.[5]

The portion of the Information relevant to this discussion reads:

[A]bove-named [respondents], conspiring, confederating, and helping one another, with grave abuse of confidence, being the Cashier and Bookkeeper of the Rural Bank of Pototan, Inc., Pototan, Iloilo, without the knowledge and/or consent of the management of the Bank x x x.

It is beyond doubt that tellers, Cashiers, Bookkeepers and other employees of a Bank who come into possession of the monies deposited therein enjoy the confidence reposed in them by their employer. Banks, on the other hand, where monies are deposited, are considered the owners thereof. This is very clear not only from the express provisions of the law, but from established jurisprudence. The relationship between banks and depositors has been held to be that of creditor and debtor. Articles 1953 and 1980 of the New Civil Code, as appropriately pointed out by petitioner, provide as follows:

Article 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

Article 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning loan.

In a long line of cases involving Qualified Theft, this Court has firmly established the nature of possession by the Bank of the money deposits therein, and the duties being performed by its employees who have custody of the money or have come into possession of it. The Court has consistently considered the allegations in the Information that such employees acted with grave abuse of confidence, to the damage and prejudice of the Bank, without particularly referring to it as owner of the money deposits, as sufficient to make out a case of Qualified Theft. For a graphic illustration, we cite *Roque v. People*,^[6] where the accused teller was convicted for Qualified Theft based on this Information:

That on or about the 16th 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 BABS LA in the total amount of P10,000.00, Philippine currency.

In convicting the therein appellant, the Court held that:

[S]ince 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.[7]

Also in *People v. Sison*,^[8] the Branch Operations Officer was convicted of the crime of Qualified Theft based on the Information as herein cited:

That in or about and during the period compressed between January 24, 1992 and February 13, 1992, both dates inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the following, to wit:

Cash money amounting to P6,000,000.00 in different denominations belonging to the PHILIPPINE COMMERCIAL INTERNATIONAL BANK (PCIBank for brevity), Luneta Branch, Manila represented by its Branch Manager, HELEN U. FARGAS, to the damage and prejudice of the said owner in the aforesaid amount of P6,000,000.00, Philippine Currency.

That in the commission of the said offense, herein accused acted with grave abuse of confidence and unfaithfulness, he being the Branch Operation Officer of the said complainant and as such he had free access to the place where the said amount of money was kept.

The judgment of conviction elaborated thus:

The crime perpetrated by appellant against his employer, the Philippine Commercial and Industrial Bank (PCIB), is Qualified Theft. Appellant could not have committed the crime had he not been holding the position of Luneta Branch Operation Officer which gave him not only sole access to the bank vault xxx. The management of the PCIB reposed its trust and confidence in the appellant as its Luneta Branch Operation Officer, and it was this trust and confidence which he exploited to enrich himself to the damage and prejudice of PCIB x x x.[9]

From another end, *People v. Locson*,^[10] in addition to *People v. Sison*, described the nature of possession by the Bank. The money in this case 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. The Court held therein that when the defendant, with grave abuse of confidence, removed the money and appropriated it to his own use without the consent of the Bank, there was taking as contemplated in the crime of Qualified Theft.^[11]

Conspicuously, in all of the foregoing cases, where the Informations merely alleged the positions of the respondents; that the crime was committed with grave abuse of confidence, with intent to gain and without the knowledge and consent of the Bank, without necessarily stating the phrase being assiduously insisted upon by respondents, "of a relation by reason of dependence, guardianship or vigilance, between the respondents and the offended party that has created a high degree of confidence between them, which respondents abused,"^[12] and without employing the word "owner" in lieu of the "Bank" were considered to have satisfied the test of sufficiency of allegations.

As regards the respondents who were employed as Cashier and Bookkeeper of the Bank in this case, there is even no reason to quibble on the allegation in the Informations that they acted with grave abuse of confidence. In fact, the Information which alleged grave abuse of confidence by accused herein is even more precise, as this is exactly

the requirement of the law in qualifying the crime of Theft.

In summary, the Bank acquires ownership of the money deposited by its clients; and the employees of the Bank, who are entrusted with the possession of money of the Bank due to the confidence reposed in them, occupy positions of confidence. The Informations, therefore, sufficiently allege all the essential elements constituting the crime of Qualified Theft.

On the theory of the defense that the DOJ is the principal party who may file the instant petition, the ruling in *Mobilia Products, Inc. v. Hajime Umezawa*[13] is instructive. The Court thus enunciated:

In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. x x x.

On the alleged wrong mode of appeal by petitioner, suffice it to state that the rule is well-settled that in appeals by certiorari under Rule 45 of the Rules of Court, only errors of law may be raised,[14] and herein petitioner certainly raised a question of law.

As an aside, even if we go beyond the allegations of the Informations in these cases, a closer look at the records of the preliminary investigation conducted will show that, indeed, probable cause exists for the indictment of herein respondents. Pursuant to Section 6, Rule 112 of the Rules of Court, the judge shall issue a warrant of arrest only upon a finding of probable cause after personally evaluating the resolution of the prosecutor and its supporting evidence. *Soliven v. Makasiar*,[15] as reiterated in *Allado v. Driokno*,[16] explained that probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.[17] The records reasonably indicate that the respondents may have, indeed, committed the offense charged.

Before closing, let it be stated that while it is truly imperative upon the fiscal or the judge, as the case may be, to relieve the respondents from the pain of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the respondents, conversely, it is also equally imperative upon the judge to proceed with the case upon a showing that there is a *prima facie* case against the respondents.

WHEREFORE, premises considered, the Petition for Review on Certiorari is hereby GRANTED. The Orders dated 30 January 2006 and 9 June 2006 of the RTC dismissing Criminal Cases No. 05-3054 to 05-3165 are REVERSED and SET ASIDE. Let the corresponding Warrants of Arrest issue against herein respondents TERESITA PUIG and ROMEO PORRAS. The RTC Judge of Branch 68, in Dumangas, Iloilo, is directed to proceed with the trial of Criminal Cases No. 05-3054 to 05-3165, inclusive, with reasonable dispatch. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Reyes, and Leonardo-De Castro, JJ., concur.

* Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 16 January 2008.

[1] Records, pp. 1, 170-391.

- [2] Records, pp. 490-495.
- [3] Id. at 469-470.
- [4] 63 Phil. 369, 371 (1936).
- [5] People v. Lab-eo, 424 Phil. 482, 495 (2002).
- [6] G.R. No. 138954, 25 November 2004, 444 SCRA 98, 100-101.
- [7] Id. at 119.
- [8] 379 Phil. 363, 366-367 (2000).
- [9] Id. at 385.
- [10] 57 Phil. 325 (1932).
- [11] Id.
- [12] Rollo, p. 158.
- [13] G.R. No. 149357, 4 March 2005, 452 SCRA 736, 757.
- [14] Reas v. Bonife, G.R. Nos. 54348-49, 17 October 1990, 190 SCRA 493, 501.
- [15] G.R. No. L-82585, 14 November 1988, 167 SCRA 394.
- [16] G.R. No. 113630, 5 May 1994, 32 SCRA 192, 201.
- [17] Id.

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