

## GRACE SAN DIEGO Y TRINIDAD, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.

*G.R. No. 176114. April 08, 2015*

Ponente: PERALTA, J.

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### PERALTA, J.:

For resolution of this Court is the Petition for Review, dated January 23, 2007, of petitioner Grace San Diego which seeks to reverse and set aside the Decision[1] and Resolution,[2] dated March 6, 2006 and December 14, 2006, respectively, of the Court of Appeals (CA) affirming with modification the Decision[3] dated August 20, 2001 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 17, finding her guilty beyond reasonable doubt of the crime of qualified theft.

The following are the antecedent facts as found in the records.

Petitioner Grace San Diego had been the accountant of Obando Fisherman's Multi-Purpose Cooperative, Inc. (OFMPCI) from January 1993 to March 11, 1997. Petitioner was in charge of accounting all business transactions of the cooperative and performed the functions of cashier and teller, granted loans and did check discounting and trading. She also recorded and reported the cash in bank transactions and summarized the bank transactions for the day and was also entrusted with a set of blank checks pre-signed and was authorized to fill up the checks, particularly the date, the amount in words and in figures, and the payee.

That from November 18, 1996 to January 6, 1997, petitioner acted as cashier when Teresita Gonzales was on maternity leave and acted as teller from January 13- 30, 1997 when Flordeliza Ocampo was on her honeymoon. She then, on both occasions, had complete access to the cash vaults and filing cabinets of the cooperative where its documents were kept.

On March 12, 1997, petitioner stopped reporting for work. Narciso Correa, the General Manager of the cooperative, then instructed the bookkeeper, Angelita Dimapelis, to prepare bank book balance based on the cash transactions during the day at the office. They tried to establish the accountability of San Diego by comparing the cash position she prepared and certified as correct against the balances of the bank. Dimapelis asked the different depository banks for their bank balances since their savings account passbooks and bank statements were missing at that time.[4]

It was only after Correa and Dimapelis reconciled the cash position with the bank balances that they discovered the discrepancies in petitioner's report. The audited figure showed the cash on hand in bank to be Php3,712,442.80 as of March 11, 1997. However, petitioner reported and certified the cash on hand of the cooperative with the total amount of Php9,590,455.17 to be correct. Dimapelis reported the said discrepancies to Correa and the Board of Directors. It was then that they decided to file a criminal complaint against San Diego.[5]

Thus, an Information was filed against petitioner for the crime of qualified theft,[6] which reads as follows:

That [on] or about the period from January 1996 up to March 1997 in the [M]unicipality of Obando, [P]rovince

of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being employed as accountant, cashier and teller of Obando Fisherman's Multi-Purpose Cooperative, Inc. (OFMPCI) and as such had access to the books, cash vaults and bank deposits of the Cooperative and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of Obando Fisherman's Multi-Purpose Cooperative, Inc., take, steal and carry away with her cash amounting to Php6,016,084.26, to [the] damage and prejudice of the said Obando Fisherman's Multi-Purpose Cooperative, Inc., in the said amount of Php6,016,084.26.

CONTRARY TO LAW.[7]

Upon arraignment on December 11, 1987, the accused, then assisted by counsel de oficio for arraignment only, entered a plea of not guilty. The pre-trial having been waived, trial on the merits ensued.

The prosecution, to prove the above-stated facts, presented the testimonies of Alfonso Piscasio, its expert witness, Narciso Correa, Angelita Demapilis, Teresita Gonzales, Noel Hilario and Santiago Panganiban. The testimonies of Dante Liwanag, Cecilia Sayo and Jessybelle San Diego were dispensed with. The defense, on the other hand, presented the testimonies of Alberto C. Gonzales and Criselda Sarmiento-Oplas. The testimony of Oplas, the defense's expert witness, can be summarized as follows:

Oplas stated that she went over the bank reconciliation statements for the whole year of 1996 and January to March 1997, the financial statements called financial conditions and the financial operations of the company for the years ending December 1996 and March 1997. She noticed that one of the recording items stated "overstatement of deposit" or overrecording of deposit so that it was deducted from the book. Another reconciling item stated "understatement deposit" and it was added. In "overstatement of deposit," she found a notation "shortage" but did not find that the amount added in the case of understatement of deposit was offset against the shortage or the amount deducted from the book in case of overstatement of deposit.[8]

Consequently, the RTC rendered a Decision dated August 20, 2001, finding petitioner Grace San Diego guilty beyond reasonable doubt of the crime charged, thus:

WHEREFORE, based on the foregoing findings, the Court hereby finds accused GRACE SAN DIEGO y TRINIDAD guilty beyond reasonable doubt of the crime of QUALIFIED THEFT as defined and penalized under Article 310, in relation to Articles 308 and 309 of the Revised Penal Code, and accordingly, sentences her to suffer the penalty of reclusion perpetua for forty years without pardon before the lapse of 40 years and with the accessory penalties of death under Article 40 of the Revised Penal Code, and to indemnify the Obando Fisherman's Multi-Purpose Cooperative, Inc., in the amount of Php6,016,084.26.

SO ORDERED.[9]

Due to the nature of the judgment, petitioner filed her appeal with this Court. However, in accordance with the ruling in *People v. Mateo*,<sup>[10]</sup> the appeal was transmitted to the CA for intermediate review. The CA then affirmed the decision of the RTC, with modification that she indemnify the Obando Fisherman's Multi-Purpose Cooperative, Inc. in the amount of Php2,080,000.00. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the decision of the trial court appealed from which found accused-appellant guilty beyond reasonable doubt of the crime of QUALIFIED THEFT is hereby AFFIRMED with the MODIFICATION that she is to indemnify the Obando Fisherman's Multi-Purpose Cooperative, Inc. in the amount of Php 2,080,000.00.

SO ORDERED.[11]

Petitioner, after the CA denied her motion for reconsideration, filed with this Court the present petition stating the

following grounds:

a)

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT THE PROOF ADDUCED BY THE PEOPLE SUFFICES TO OVERTURN THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE;

b)

THE COURT OF APPEALS ERRED IN THE CHARACTERIZATION OF THE OFFENSE ALLEGED TO HAVE BEEN COMMITTED, AND IN CONSEQUENCE, COMMITTED [A] GRAVE LEGAL ERROR WHEN IT HELD THAT THE PROOF ADDUCED CONGRUES WITH THE OFFENSE WITH WHICH APPELLANT WAS CHARGED; AND

c)

THE COURT OF APPEALS LIKewise COMMITTED A GRAVE ERROR OF LAW IN THE MATTER OF THE PENALTY IMPOSED.

In its comment dated April 18, 2007, the Office of the Solicitor General (OSG) stated that impleading the CA is procedurally improper. It was stressed that the petition was an offshoot of a criminal case, thus, the real party-respondent-in-interest is the People of the Philippines. The OSG prayed that the petition be dismissed outrightly.

This Court finds the present petition partially with merit.

It is settled that absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion, the factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court.[12] Petitioner is of the opinion that the CA erred in affirming the factual findings of the RTC. She insists that the prosecution was not able to prove her guilt beyond reasonable doubt because there was no proof in the audit that the cooperative had really so much funds and that in consequence there was deficiency of some Php6,000,000 when compared to pertinent bank statements. As such, petitioner asserts that it is essential for a successful prosecution for theft that the existence of the personality stolen be established by qualitative evidence, so the prosecution must fail if no such proof of good quality was adduced.[13]

This Court disagrees.

The CA did not err when it ruled that the proof adduced by the prosecution is sufficient to prove petitioner's guilt beyond reasonable doubt. The prosecution presented the testimony of its expert witness, Alfonso Piscasio, the cooperative's independent auditor since 1992. He stated that his audit was based on standard and generally accepted auditing procedures.[14] The audit report, duly offered and presented in the trial, was supported by certifications by several depository banks of the cooperative indicating its balance on its account. Records are bereft of any showing that the audit report made by the independent auditor is erroneous and unsupported by documents and bank statements. Thus, there lies no reason for this Court not to afford full faith and credit to his report.

Petitioner's own expert witness, Criselda Sarmiento Oplas, failed to dispute the audit report presented. She admitted to focusing her review on bank reconciliation made by Piscasio.[15] It was only upon cross-examination that she saw the daily cash flow that petitioner prepared and certified.[16] She did not go over the primary books of accounts of the cooperative like the ledgers, journals and vouchers nor its commercial documents such as

invoices, returned checks including account deposits. She limited herself to the monthly conciliation reports.[17]

Petitioner also asserts that the People did not present any witness who categorically testified that petitioner ran away with the supposed missing funds. She claimed that the demonstration that some checks of varying amounts not recorded in petitioner's books notwithstanding their return or dishonor, only proved her incompetence in the performance of her assigned task and not necessarily criminal authorship.

This Court does not agree. It was held in *People v. Ragon* that resort to circumstantial evidence is inevitable when there are no eyewitnesses to a crime.[18] Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[19] The courts are allowed to rule on the bases of circumstantial evidence if the following requisites concur: (1) there is more than one circumstance, (2) the facts from which the inferences are derived are proven, and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[20] The corollary rule is that the circumstances established must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[21]

In the instant case, the following facts were established in the trial court, which the CA later affirmed:

1)

Petitioner was the accountant of the cooperative. She had custody of the cooperative's checks which were pre-signed by its Manager and Chairman of the Board of Directors. She was likewise in charge of cash in bank. She had custody of the documents pertaining to the withdrawal of the cooperative's deposits with its depository banks.

2)

Petitioner completed said checks by filling in all the details inclusive of the date, name of payee and the amount of the check in words and in figures but exclusive of the signatures.

3)

From November 18, 1996 to January 6, 1997, she acted as cashier when Teresita Gonzales was on maternity leave and acted as teller from January 13-30, 1997 when Flordeliza Ocampo went into her honeymoon. She then, on both occasions, had complete access to the cash vaults and filing cabinets of the cooperative where its documents were kept.

4)

Petitioner prepared a certification that the amount of Php9,653,527.06 represented the total cash balance of the cooperative its depository banks as of March 11, 1997. Upon actual verification, it was shown that the total cash balance was only Php3,637,442. 80, indicating that there was a difference of Php 6,016,084.25 and the loss of which were unexplained.

5)

Petitioner admitted in a letter to her father that she withdrew Php200,000 from his account and Php20,000 from her sister-in-law's account in the cooperative.

6)

Petitioner deposited Php1,050,000 and Php250,000 to her account with PCI Bank on August 13, 1996 and May 28, 1996, respectively.

7)

Petitioner stopped reporting for work since March 12, 1997.[22]

In view of the foregoing circumstances and based on records, such created an unbroken chain which leads to one fair and reasonable conclusion pointing to the petitioner, to the exclusion of all others, as the guilty person.

Petitioner then insists that the proof adduced plausibly indicates commission of estafa and not qualified theft. Petitioner argued that if the thing is not taken away, but received and then appropriated or converted without the consent of the owner, the crime committed is estafa.[23]

This Court is not persuaded by her argument. One of the elements of estafa[24] with abuse of confidence is that the money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same. When the thing is received by the offender from the offended party in trust or in commission or for administration, the offender acquires both material or physical possession and juridical possession of the thing received.[25]

Juridical possession means a possession which gives the transferee a right over the thing transferred and this he may set up even against the owner.[26] It was established in the trial that petitioner never received the sum of money in trust, or on commission or for administration. Correa outlined the procedure followed by the cooperative in the deposit of its funds with the cooperative's depository banks, thus:

A: There were cash summarized for the day and the checks collected during the day for the different depository banks are summarized and prepared by Grace San Diego and this (sic) were being brought to the different depository banks and sent through our liaison office Mr. Al Gonzales.[27]

x x x x x x x x

When asked how said funds were withdrawn from said banks by the cooperative, Correa answered:

A: Normally, withdrawals are made by checks and if there are no cleared checks in the bank the accountant because she knew the cash position in the bank if there is a need of cash, a check is converted into cash in the depository bank and sent through the liaison officer and handed to the chief accountant because she was the one responsible.[28]

x x x x x x x x

As to how checks were prepared as far as withdrawals were concerned was, Correa's answer was:

A: Because we have so many things to do, we were busy we were preoccupied, we prepared set of blank check resigned and we entrusted this to Ms. Grace San Diego and she filled up the checks particularly the date, the words, the amount in words and in figure numbers, sir.[29]

Clearly, the above testimonies show that petitioner did not have juridical possession of the sum of money. She did not have the right over the sum of money she may have received in the course of her functions as accountant, teller and cashier of the cooperative. The CA was correct when it described the possession of the petitioner was akin to that of a receiving teller of funds received from third persons paid to the bank. Payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent, autonomous right to retain the money or goods received in consequence of the agency, as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault.[30]

Anent the issue of penalty, the penalty for the crime of qualified theft based on Article 310 of the Revised Penal Code (RPC) is the penalty next higher by two (2) degrees than those respectively specified in Article 309 of the RPC, thus:

The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than

12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prison mayor or reclusion temporal, as the case may be.

From the provisions of Articles 309 and 310 of the RPC, the penalty that is two (2) degrees higher than prison mayor in its minimum and medium periods is reclusion temporal in its medium and maximum periods. In view, however, of the incremental penalty in simple theft under Article 309 of the RPC, which is likewise applicable to the crime of qualified theft, when the value of the thing stolen is more than P22,000.00, the penalty shall be imposed in its maximum period with an additional period of one (1) year for every P10,000.00 in excess of P22,000.00. In the case at bar, the value of the property stolen as determined by the RTC and modified by the CA is P2,080,000.00. Deducting P22,000.00 to the amount, the difference of P2,058,000.00 will then be divided by P10,000.00, disregarding any amount less than P10,000.00, we will have two hundred five (205). Thus, 205 years is the incremental penalty. Since the impossible penalty for qualified theft is reclusion temporal in its medium and maximum periods to be imposed in its maximum period which is eighteen (18) years, two (2) months, and twenty-one (21) days to twenty (20) years, if we add the incremental penalty of two hundred five (205) years, then the range of the penalty is two hundred twenty-three (223) years, two (2) months, and twenty-one (21) days to two hundred twenty-five (225) years. However, such penalty cannot be imposed because the maximum penalty that can be imposed is only up to 40 years, which is the maximum period of reclusion perpetua.

Unlike in Simple Theft where the maximum penalty cannot exceed twenty (20) years, in Qualified Theft such limitation does not exist. Nonetheless, inasmuch as the penalty impossible in the case at bar exceeds twenty (20) years, logically, the penalty that should be imposed is reclusion perpetua, which is the penalty one degree higher than reclusion temporal.

There is now a need to modify the penalty imposed by the lower court and affirmed by the CA. Verily, the proper penalty impossible is, thus, the penalty of reclusion perpetua, but it was incorrect for the RTC to sentence the accused to the penalty of reclusion perpetua for forty (40) years without pardon because that would be a limitation on the part of the power of the Chief Executive. The exercise of the pardoning power is discretionary in the President and may not be controlled by the legislature or reversed by the court, save only when it contravenes the limitations set forth by the Constitution.[31] Interest at the rate of six percent (6%) per annum is likewise imposed from date of finality of this Decision until full payment pursuant to *Nacar v. Gallery Frames*. [32]

WHEREFORE, the petition is DENIED. Consequently, the Decision and Resolution, dated March 6, 2006 and December 14, 2006, respectively, of the Court of Appeals affirming with modification the Decision dated August 20, 2001 of the Regional Trial Court of Malolos, Bulacan, Branch 17, finding petitioner guilty beyond reasonable doubt of the crime of qualified theft under Article 310, in connection with Article 308 of the Revised Penal Code, are hereby AFFIRMED with MODIFICATION. Petitioner Grace San Diego y Trinidad is sentenced to reclusion perpetua, with all its accessory penalties and to indemnify the Obando Fisherman's Multi-Purpose Cooperative, Inc. in the amount of Php2,080,000.00, plus interest at the rate of six percent (6%) per annum from finality of judgment until full satisfaction.

### **SO ORDERED.**

Velasco, Jr. (Chairperson), Del Castillo,[\*] Reyes, and Jardeleza, JJ., concur.

April 8, 2015

### NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on \_\_\_\_April 8, 2015\_\_\_\_ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 22, 2015 at 11:07 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

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[\*] Designated Acting Member, per Special Order No. 1958 dated March 23, 2015.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Marina L. Buson and Martin S. Villarama, Jr. (now a member of this Court), concurring; rollo, pp. 22-53.

[2] Id. at 63-56.

[3] Penned by Presiding Judge Teresita V. Diaz- Baldos; id. at 86-110.

[4] CA Decision p. 6, rollo p. 27.

[5] TSN, November 17, 1998, pp. 11-12

[6] Art. 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

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 the plantation or 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.

[7] Rollo, p. 86.

[8] TSN, June 22, 2000, p. 20.

[9] Rollo p. 110.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[11] CA Decision, p. 31, rollo p. 52.

[12] Libuit v. People, 506 Phil. 591, 599 (2005).

[13] Rollo, p. 8.

[14] TSN, April 28, 1998, p. 18.

[15] TSN, June 22, 2000, p. 15.

[16] CA Decision, pp. 23-24; rollo, pp. 44-45;

[17] TSN, July 27, 2000, pp- 9-10

[18] 346 Phil. 772, 779 (1997).

[19] *People v. Danao*, 313 Phil. 178, 184 (1995), citing *People v. Desalisa*, G. R. No. 95262, January 4, 1994, 229 SCRA 35.

[20] *Id.*, citing *People v. Sunga, et al.*, G.R. No. 106096, November 22, 1994, 238 SCRA 274.

[21] *Id.*, citing *People v. Genobia, et al.*, G.R. No. 110058, August 3, 1994, 234 SCRA 699; *People v. Estrellanes, Jr., et al.*, G.R. No. 111003, December 15, 1994, 239 SCRA 235.

[22] CA Decision, pp. 26-27; rollo, pp. 47-48.

[23] Citing *People v. Nieves De Vera*, 43 Phil. 1000, 1004 (1922); *People v. Jaranilla*, G.R. No. L-28547, February 22, 1974, 55 SCRA 563.

[24] Art. 315 Swindling (estafa) Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[25] Reyes, *The Revised Penal Code*, 2008 ed., Book Two, p. 781.

[26] *Id.*

[27] TSN, August 25, 1998, p. 20.

[28] CA Decision, p. 8; rollo, p. 29.

[29] TSN, August 25, 1998, p. 21.

[30] Citing *Guzman vs. CA*, 99 Phil. 704, 707 (1956), citing Article 1915, New Civil Code.

[31] Cruz, *Philippine Political Law*, 2002 ed., p. 230.

[32] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

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