

ANITA L. MIRANDA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 176298. January 25, 2012

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Petitioner Anita L. Miranda appeals the January 11, 2007 Decision[1] of the Court of Appeals (CA) affirming the judgment[2] of the Regional Trial Court (RTC) of Manila, Branch 20, convicting her of qualified theft.

Petitioner was charged with qualified theft in an Information dated November 28, 2002. The Information reads:

That in or about and during the period comprised between April 28, 1998 and May 2, 2002, 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 total amount of P797,187.85 belonging to VIDEO CITY COMMERCIAL, INC. and VIVA VIDEOCITY, INC. represented by MIGUEL Q. SAMILLANO, in the following manner, to wit: by making herself the payee in forty-two pre-signed BPI Family Bank checks in the account of Video City Commercial and Jefferson Tan (the latter as franchise[e]) and encashing said checks in the total amount of P797,187.85, for her personal benefit, to the damage and prejudice of said owner in the aforesaid amount of P797,187.85, Philippine Currency.

That the said accused acted with grave abuse of confidence, she being then employed as bookkeeper in the aforesaid firm and as such was privy to the financial records and checks belonging to complainant and was actually entrusted with the said financial records, documents and checks and their transactions thereof in behalf of complainant.[3]

Upon arraignment, petitioner pleaded not guilty. Trial thereafter ensued.

Summarily, the prosecution proved the following facts: Video City Commercial, Inc. (VCCI) and Viva Video City, Inc. (Viva) were sister companies which managed a chain of stores known as Video City. These stores, some company-owned while others were operated in joint ventures with franchisees, were engaged in the sale and rental of video-related merchandises. During the period of April 28, 1998 to May 2, 2002, petitioner was the accounting clerk and bookkeeper of VCCI and Viva. One of her duties was to disburse checks for the accounts she handled. She was assigned to handle twelve (12) Video City store franchise accounts, including those of Tommy Uy, Wilma Cheng, Jefferson Tan and Sharon Cuneta. As regards the franchisee Jefferson Tan, who was out of the country most of the time, Tan pre-signed checks to cover the store's disbursements and entrusted them to petitioner. The pre-signed checks by Jefferson Tan were from a current account maintained jointly by VCCI and Jefferson Tan at BPI Family Bank, Sta. Mesa. There was also an existing agreement with the bank that any disbursement not exceeding P20,000.00 would require only Tan's signature.[4]

Taking advantage of Tan's constant absence from the country, petitioner was able to use Tan's joint-venture bank account with VCCI as a clearing house for her unauthorized transfer of funds. Petitioner deposited VCCI checks coming from other franchisees' accounts into the said bank account, and withdrew the funds by writing

checks to her name using the checks pre-signed by Tan. It was only after petitioner went on maternity leave and her subsequent resignation from the company in May 2002 that an audit was conducted since she refused to turn over all the financial records in her possession. The audit was made on all the accounts handled by petitioner and it was discovered that she made unauthorized withdrawals and fund transfers amounting to P4,877,759.60.[5]

The prosecution, in proving that petitioner had unlawfully withdrawn P797,187.85 for her own benefit, presented as its witness Jose Laureola, the assistant manager/acting cashier of BPI Family Bank, Sta. Mesa Branch. Laureola presented a microfilm of the checks, the encashed checks and deposit slips. He also presented the bank statement of VCCI which showed the encashment of forty-two (42) checks from the account of VCCI and Jefferson Tan amounting to P797,187.85.[6]

In the face of the prosecution's evidence, petitioner chose not to present any evidence during trial.

On October 7, 2005, the RTC found petitioner guilty beyond reasonable doubt of qualified theft. The RTC sentenced her to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, two (2) months and twenty-one (21) days of reclusion temporal, as maximum, and to pay VCCI P797,187.85 plus costs.[7]

The RTC found that the prosecution was able to establish that the checks deposited to the joint account of VCCI and Jefferson Tan at BPI Family Bank were unlawfully withdrawn by the petitioner without VCCI's consent. Petitioner took advantage of her position with VCCI and her access to the checks and its bank accounts.

On appeal, the CA affirmed the decision of the RTC. The CA held that contrary to petitioner's claim that the prosecution failed to show who was the absolute owner of the thing stolen, there was no doubt that the personal property taken by petitioner does not belong to her but to Jefferson Tan and his joint venture partner VCCI. Thus, petitioner was able to gain from taking other people's property without their consent. More, she was able to perpetrate the crime due to her position in VCCI which gave her access to the joint venture account of VCCI and Jefferson Tan, both of whom reposed trust and confidence in her. She exploited said trust and confidence to their damage in the amount of P797,187.85.

Undaunted, petitioner filed the instant petition for review on certiorari before this Court, raising the following issues:

- WHETHER OR NOT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED THEFT.

1-a. WHETHER THE PHRASE "X X X SHALL TAKE THE PERSONAL PROPERTY OF ANOTHER WITHOUT THE LATTER'S CONSENT X X X" IN ARTICLE 308 OF THE REVISED PENAL CODE IN RELATION TO ARTICLE 310 OF THE SAME CODE WOULD REQUIRE AS AN ELEMENT OF "QUALIFIED THEFT" AN ESTABLISHED PROOF OF "OWNERSHIP" OF THE PROPERTY ALLEGEDLY STOLEN?

1-b. WHETHER IT IS IMPERATIVE THAT THE DUE EXECUTION AND AUTHENTICITY OF THE ALLEGED SIGNATURES OF THE ACCUSED IN THE CHECKS BE FULLY ESTABLISHED AND IDENTIFIED AND IF NOT SO ESTABLISHED AND IDENTIFIED, THE SAME WOULD BE A FATAL FLAW IN THE EVIDENCE OF THE PROSECUTION WHICH INEVITABLY WOULD LEAD TO ACCUSED'S ACQUITTAL?

1-c. WHETHER THE FAILURE TO ESTABLISH AND AUTHENTICATE OR IDENTIFY THE SIGNATURES OF THE ACCUSED ANNIE MIRANDA AND JEFFERSON TAN CONSTITUTED A FATAL FLAW IN PROVING THAT THE ACCUSED AND JEFFERSON TAN WERE THE AUTHORS OF SAID SIGNATURES?

1-d. [WHETHER THE] CONCLUSION OF FACTS BY THE REGIONAL TRIAL COURT AND COURT OF APPEALS ARE NOT SUPPORTED BY EVIDENCE.

1-e. WHETHER THE CHECKS AND VOUCHERS PRESENTED AS EVIDENCE NOT IN THEIR ORIGINALS SHOULD HAVE BEEN DENIED ADMISSION BY THE COURT A QUO, THERE BEING NO SUFFICIENT FACTS ADDUCED TO JUSTIFY THE PRESENTATION OF XEROX COPIES OR SECONDARY EVIDENCE.[8]

Essentially, the issue for our resolution is whether the CA correctly affirmed petitioner's conviction for qualified theft.

Petitioner insists that she should not have been convicted of qualified theft as the prosecution failed to prove the private complainant's absolute ownership of the thing stolen. Further, she maintains that Jefferson Tan's signatures on the checks were not identified by any witness who is familiar with his signature. She likewise stresses that the checks and vouchers presented by the prosecution were not original copies and that no secondary evidence was presented in lieu of the former.

The appeal lacks merit.

A careful review of the records of this case and the parties' submissions leads the Court to conclude that there exists no cogent reason to disturb the decision of the CA. We note that the arguments raised by petitioner in her petition are a mere rehash of her arguments raised before, and correctly resolved by, the CA.

The elements of the crime of theft as provided for in Article 308[9] of the Revised Penal Code are as follows: (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.[10] Theft becomes qualified when any of the following circumstances under Article 310[11] 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.[12]

Here, the prosecution was able to prove beyond reasonable doubt that the amount of P797,187.85 taken does not belong to petitioner but to VCCI and that petitioner took it without VCCI's consent and with grave abuse of confidence by taking advantage of her position as accountant and bookkeeper. The prosecution's evidence proved that petitioner was entrusted with checks payable to VCCI or Viva by virtue of her position as accountant and bookkeeper. She deposited the said checks to the joint account maintained by VCCI and Jefferson Tan, then withdrew a total of P797,187.85 from said joint account using the pre-signed checks, with her as the payee. In other words, the bank account was merely the instrument through which petitioner stole from her employer VCCI.

We find no cogent reason to disturb the above findings of the trial court which were affirmed by the CA and fully supported by the evidence on record. Time and again, the Court has held that the facts found by the trial court, as affirmed in toto by the CA, are as a general rule, conclusive upon this Court[13] in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable.[14] The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial.[15] Absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case,

this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses.

Moreover, we agree with the CA when it gave short shrift to petitioner's argument that full ownership of the thing stolen needed to be established first before she could be convicted of qualified theft. As correctly held by the CA, the subject of the crime of theft is any personal property belonging to another. Hence, as long as the property taken does not belong to the accused who has a valid claim thereover, it is immaterial whether said offender stole it from the owner, a mere possessor, or even a thief of the property.[16] In any event, as stated above, the factual findings of the courts a quo as to the ownership of the amount petitioner stole is conclusive upon this Court, the finding being adequately supported by the evidence on record.

However, notwithstanding the correctness of the finding of petitioner's guilt, a modification is called for as regards the imposable penalty. On the imposition of the correct penalty, *People v. Mercado*[17] is instructive. Pursuant to said case, in the determination of the penalty for qualified theft, note is taken of the value of the property stolen, which is P797,187.85 in this case. 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, that is, eight (8) years, eight (8) months and one (1) day to ten (10) years of prision mayor.

To determine the additional years of imprisonment to be added to the basic penalty, the amount of P22,000.00 is deducted from P797,187.85, which yields a remainder of P775,187.85. 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. However, the total imposable penalty for simple theft should not exceed 20 years. Thus, had petitioner committed simple theft, the penalty would be 20 years of reclusion temporal. As the penalty for qualified theft is two degrees higher, the trial court, as well as the appellate court, should have imposed the penalty of reclusion perpetua.

WHEREFORE, the January 11, 2007 Decision of the Court of Appeals in CA-G.R. CR No. 29858 affirming the conviction of petitioner Anita L. Miranda for the crime of qualified theft is **AFFIRMED** with the **MODIFICATION** that the penalty is increased to reclusion perpetua.

With costs against the petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo, pp. 24-35. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Conrado M. Vasquez, Jr. and Lucenito N. Tagle concurring. The assailed decision was rendered in CA-G.R. CR No. 29858.

[2] CA rollo, pp. 33-42. The decision of the RTC was penned by Judge Marivic T. Balisi-Umali.

[3] Records, p. 1.

[4] CA rollo, pp. 34-39; rollo, pp. 26-27.

[5] Id.

[6] Id. at 38.

[7] Id. at 39-41.

[8] Rollo, pp. 12-14.

[9] 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.

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

[11] 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.

[12] *People v. Sison*, *supra* note 10 at 364.

[13] See *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 584, citing *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 283.

[14] See *Reyes v. CA*, 328 Phil. 171, 179-180 (1996) citing *Floro v. Llenado*, 314 Phil. 715, 727-728 (1995). The Court, however, may determine the factual milieu of cases or controversies under specific circumstances, such as:

- (1) when the inference made is manifestly mistaken, absurd or impossible;
- (2) when there is a grave abuse of discretion;
- (3) when the finding is grounded entirely on speculations, surmises or conjectures;
- (4) when the judgment of the Court of Appeals is based on misapprehension of facts;
- (5) when the findings of fact are conflicting;
- (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) when the findings of the Court of Appeals are contrary to those of the trial court;
- (8) when the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion;
- (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

[15] *People v. Martinada*, G.R. Nos. 66401-03, February 13, 1991, 194 SCRA 36, 41.

[16] Florenz D. Regalado, *Criminal Law Conspectus*, First edition, p. 522.

[17] G.R. No. 143676, February 19, 2003, 397 SCRA 746, 758.

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