

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROSALIE COLILAP BAÑAGA, APPELLANT.

G.R. No. 183699. November 24, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Rosalie Colilap Bañaga (appellant) assails the January 22, 2008 Decision of the Court of Appeals[1] affirming with modification that of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 which convicted her of Qualified Theft in eight cases - Criminal Case Nos. L-6503, L-6504, L-6510, L-6511, L-6512, L-6513, L-6514 and L-6515.

Appellant was actually charged with 16 counts of Qualified Theft, Criminal Case Nos. L-6503 up to L-6517. The Information in the first case, Criminal Case No. L-6503, reads:

X X X X

That in the month of January, 1999 in the municipality of Mangatarem, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and with grave abuse of confidence, being then an employee of complainants Perfecto B. Velasquez, Jr. and Petrocenia B. Velasquez in the latter's establishment named St. John Memorial Park and also of the Lisondra Land, Inc., a land developer both located in Mangatarem, Pangasinan, did then and there willfully, unlawfully and feloniously take, carry away, convert and misappropriate for her own use and benefit the case amounts totaling One Hundred Thousand Six Hundred Eight and 39/100 Pesos (P106,608.39) (sic) which were handed to and received by her as such employee with the assigned duty to deposit immediately the said amounts to the corresponding bank book accounts opened/maintained by the complainants pertaining to their share as landowner's fund and the share for the perpetual care fund of said St. John Memorial Park with the Rural Bank of Anda, (Pangasinan), Inc., Mangatarem Branch, to the damage and prejudice of the said complainants.

Contrary to Articles 309 & 310 of the Revised Penal Code.[2]

X X X X

The 15 other Informations are similarly worded except with respect to the dates of commission and amounts involved.

The brothers Jude B. Velasquez and Perfecto B. Velasquez, Jr., as landowners, entered into a joint venture agreement (the agreement) with Lisondra Land, Inc. (Lisondra Land) to develop a memorial park, to be named St. John Memorial Park and Garden (St. John). The landowners agreed to provide the parcel of land to be developed and the lots to be sold by Lisondra Land,[3] the gross sales to be shared by them - 45% to the landowners and 55% to Lisondra Land.

The parties to the agreement further agreed to put up a Perpetual Care Plan to serve as trust fund for the maintenance and upkeep of the lots, to be generated from payments collected from lot buyers.

St. John was in fact developed and went into full operation in January 1999. Lisondra Land employed John Barbo (Barbo) and Lani Ramirez (Lani) as branch managers, Rowena Pabros (Rowena) as marketing manager, and appellant as secretary.[4]

The landowners entrusted to appellant the responsibility of receiving their share in the gross sales of the lots; to Lani the responsibility of receiving their share from the Perpetual Care Plan; and still to appellant the responsibility of depositing their share at the Rural Bank of Anda (the Bank), Mangatarem Branch, Pangasinan where they maintained two accounts - the landowners' share and the perpetual care fund (the fund).

Petrocenia B. Velasquez (Petrocenia), mother of the landowners and designated representative of one of them (Jude), was in charge of overseeing their bank accounts. She noticed that there were no deposits to the landowners' share for December 1999, while there were only partial deposits for the other months of 1999; and that appellant did not deposit P95,193.65 to the landowners' share account and P110,828.79 to the fund from January 1999 to April 2000.

Denying the accusations, appellant claimed that while she affixed her signature on some of the petty cash vouchers acknowledging receipt of some amounts, her signatures on the weekly remittances were forged by Lani.[5]

Petrocenia countered, however, that appellant, together with her husband, had admitted having appropriated the questioned amounts and that she in fact promised to reimburse them[6] but failed to.

By Decision of June 25, 2003, the trial court convicted appellant in the already specified eight cases but acquitted her in the other eight cases, disposing as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding the accused ROSALIE COLLILAP [sic] BAÑAGA, guilty beyond reasonable doubt of the crime of Qualified Theft in Crim. Cases Nos. L-6503, L-6504, L-6510, L-6511, L-6512, L-6513, L-6514 and L-6515.[7]

Accordingly, the accused is hereby sentenced to suffer:

- Crim. Case No. L-6503, the penalty of 27 years of Reclusion Perpetua, and, to pay the complainants the sum of P80,973.35 which is the amount she misappropriated;
- Crim. Case No. L-6504, the penalty of 10 years and 1 day of Prision Mayor as minimum to 14 years 8 mos. and 1 day of Reclusion Temporal as maximum, and, to pay the complainants the sum of P16,139.98 which is the amount unlawfully taken by her;
- Crim. Case No. L-6510, the penalty of 4 years, 2 mos. and 1 day of Prision Correccional as minimum to 8 years and 1 day of Prision Mayor as maximum, and, to pay the complainants the sum of P2,607.82 which is the amount unlawfully taken by the accused;
- Crim. Case No. L-6511, the penalty of 10 years and 1 day of Prision Mayor as minimum to 14 years 8 mos. and 1 day of Reclusion Temporal as maximum;
- Crim. Case No. L-6512, the penalty of 14 years, 8 mos. of Reclusion Temporal as minimum to 20 years of Reclusion Temporal as maximum, and, to pay the complainants the sum of P23,108.21 which is the amount stolen by her;
- Crim. Case No. L-6513, the penalty of 6 years and 1 day of Prision Mayor as minimum to 10 years and 1 day of Prision Mayor as maximum, and, to pay the complainants the sum of P6,934.19 which is the amount unlawfully taken by her;
- Crim. Case No. L-6514, the penalty of 29 years of Reclusion Perpetua, and, to pay the complainants the sum

of P101,851.67 which is the amount unlawfully taken by her;

- Crim. Case No. L-6515 the penalty of 6 years and 1 day of Prison Mayor as minimum to 10 years of Prison Mayor as maximum, and, to pay the complainants the sum of P7,503.04 the amount stolen by her.

The accused is also ordered to pay the costs in the aforementioned cases

On the other hand, on the grounds of reasonable doubt the accused is hereby ACQUITTED in Crim. Cases Nos. L-6505, L-6506, L-6507, L-6508, L-6509, L-6516, L-6517 and L-6518.

No costs.

SO ORDERED.

As stated early on, the Court of Appeals affirmed the trial court's decision with modification on the penalties imposed, consistent with the proper application of the Indeterminate Sentence Law. Thus the appellate court disposed:

WHEREFORE, in view of the foregoing, the assailed decision is hereby MODIFIED, in that appellant is hereby sentenced to suffer:

- In Crim. Case No. L-6503, the penalty of 11 years, 4 months and 1 day of prision mayor maximum, as minimum penalty to 18 years, 8 months and 1 day of reclusion temporal maximum as maximum penalty.

- In Crim. Case No. L-6504, the penalty of 10 years and 1 day of prision mayor maximum as minimum penalty to 16 years, 5 months and 11 days of reclusion temporal medium as maximum penalty.

- In Crim. Case No. L-6510, the penalty of 4 years, 2 months and 1 day of prision correctional maximum as minimum penalty to 9 years, 4 months and 1 day of prision mayor medium as maximum penalty.

- In Crim. Case No. L-6511, the penalty of 10 years and 1 day of prision mayor maximum as minimum penalty to 16 years, 5 months and 11 days of reclusion temporal medium as maximum penalty.

- In Crim. Case No. L-6512, the penalty of 10 years and 1 day of prision mayor maximum as minimum penalty to 16 years, 5 months and 11 days of reclusion temporal medium as maximum penalty.

- In Crim. Case No. L-6513, the penalty of 8 years, 8 months and 1 day of prision mayor medium as minimum penalty to 13 years, 1 month and 10 days of reclusion temporal minimum as maximum penalty.

- In Crim. Case No. L-6514, the penalty of reclusion perpetua.

- In Crim. Case No. L-6515, the penalty of 7 years, 4 months and 1 day of prision mayor minimum as minimum penalty to 13 years, 1 month and 10 days of reclusion temporal minimum as maximum penalty.

The assailed decision is hereby affirmed in all other aspects.

SO ORDERED.

Hence, the present petition.

Appellant faults the appellate court in affirming the trial court's crediting of the testimony of prosecution witness accountant Araceli Cruz (Araceli).

The petition fails.

The testimony given by Araceli who conducted an audit of the accounts of the landowners is supported by documentary evidence. This was not rebutted by appellant. In fact, her counsel stipulated that the pertinent data

stated in Araceli's audit report refer to the monthly deficiencies in the amounts to be deposited to the landowners' accounts.[8]

Respecting appellant's imputation to Lani of forgery of her signature in the petty cash vouchers showing that she received the questioned amounts, the same fails. For a rubber stamp of her printed name and of her position as Secretary was especially procured for her to be stamped on the petty cash vouchers "so nobody could forge [her] signature." [9] Consider her testimony below which shows that forgery could not have taken place.

Atty. Perez [to appellant]:

Q

So Madam Witness, the rubber stamp [appearing on the petty cash vouchers] was in your sole possession and nobody could get it, is it not?

A

It's true, sir.

Q

So Madam Witness, all these transactions in petty cash vouchers bearing the rubber stamp, are in fact transactions in which you personally received the money, is it not?

A

Yes, sir. [10] (emphasis and underscoring supplied)

Verily, the position held by appellant in St. John, and the special assignment given to her by the land owners, were vested with trust and confidence. She had custody of two bank books in which deposits of what she received were to be reflected. Her failure to account for the subject funds which she was under obligation to deposit constitutes asportation with intent of gain, committed with grave abuse of the confidence reposed on her. The appellate court's affirmance of her guilt for qualified theft must thus be upheld. And so must its modification of the penalties imposed by the trial court.

WHEREFORE, the appeal is DISMISSED. The assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00134 is AFFIRMED.

SO ORDERED.

Brion, Peralta,[*] Bersamin, and Sereno, JJ., concur.

[*] Additional member per Raffle dated November 24, 2010 in lieu of Justice Martin S. Villarama, Jr.

[1] The assailed Decision was penned by Associate Justice Sesonando E. Villon with the concurrence of Associate Justices Martin S. Villarama, Jr. (now an Associate Justice of this Court) and Noel G. Tijam; rollo, pp. 4-17.

[2] Records, p. 1.

[3] Id. at 10.

[4] Transcript of Stenographic Notes (TSN), August 13, 2001, pp. 3-7; TSN, October 22, 2001, pp. 2-4.

[5] TSN, July 22, 2002, pp. 10 and 12.

[6] TSN, August 17, 2001, pp. 25-26.

[7] The first case, Crim. Case No. L-6503, involved the amount of P80,973.35; the second case, Crim Case No. L-6504, involved the amount of P16,139.98; the third case, Crim. Case No. L-6510, involved the amount of P2,607.82; the fourth case, Crim. Case No. L-6511, involved the amount of P20,826.04; the fifth case, Crim. Case No. L-6512, involved the amount of P23,108.12; the sixth case, Crim. Case No. L-6513, involved the amount of P6,934.19; the seventh case, Crim. Case No. L-6514, involved the amount of P101,851.67; and the eighth case, Crim. Case No. L-6515, involved the amount of P7,503.04.

[8] TSN, September 7, 2001, pp. 4-5.

[9] TSN, November 15, 2002, p. 46.

[10] Id. at 11.

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