PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNARD G. MIRTO, ACCUSED-APPELLANT.

G.R. No. 193479. October 19, 2011

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-193479/

VELASCO JR., J.:

The Case

This is an appeal from the Decision[1] dated August 24, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03444, which affirmed the March 24, 2008 Decision[2] in Criminal Case Nos. 9034, 9115, 9117 and 9130 of the Regional Trial Court (RTC), Branch 5 in Tuguegarao City, Cagayan. The RTC found accused Bernard G. Mirto guilty beyond reasonable doubt of the crime of Qualified Theft.

The Facts

Seven Informations for Qualified Theft were filed against the accused, docketed as Criminal Case Nos. 9034, 9115, 9117, 9120, 9123, 9126, and 9130. The Informations similarly show how the offenses were allegedly committed, differing only as to the dates of the commission, the number of bags of cement involved, the particulars of the checks paid by the cement purchasers, the amounts involved, and the depositary accounts used by accused. The Information for Criminal Case No. 9034 indicted accused, thus:

> The undersigned City Prosecutor of Tuguegarao City accuses BERNARD G. MIRTO of the crime of QUALIFIED THEFT, defined and penalized under Article 310, in relation to Articles 308 and 309 of the Revised Penal Code, committed as follows:
>
> That on June 21, 2001, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, said accused BERNARD G. MIRTO, being the Branch Manager of UCC-Isabela (Tuguegarao Area), with intent to gain but without violence against or intimidation of persons nor force upon things, did then and there willfully, unlawfully and feloniously, with grave abuse of confidence and without the consent and knowledge of complainant, UNION CEMENT CORPORATION, a duly organized Corporation operating under existing laws, represented by REYNALDO S. SANTOS, Assistant Vice President - Marketing/North Luzon, whose business address is located at 5[th] Floor Kalayaan Building, 164 Salcedo Street, Makati, Metro Manila, take, steal and deposit into his personal Security Bank & Trust Co. (Tuguegarao Branch) Account No. 0301261982001, the proceeds of 4,600 bags of Portland cement, owned by herein complainant-Corporation, paid to him by the Philippine Lumber located at Bonifacio Street, this City, in the form of Checks, namely: METROBANK CHECK NOS. 103214898 and 1032214896, for P67,000.00 & P241,200.00, respectively, in the total amount of P308,200.00, which accused is obligated to convey to the complainant-Union Cement Corporation represented by its Vice-President-Marketing, REYNALDO S. SANTOS, to its loss, damage and prejudice, in the aforesaid amount of THREE HUNDRED EIGHT THOUSAND TWO HUNDRED PESOS, (P308,200.00) Philippine Currency.
>
> Contrary to law.[3]

To summarize, the seven Informations showed the following details:

Criminal Case

Date of offense

Cement bags

Purchaser/Buyers

Check payments

Amount (PhP)

Checks deposited In

Total Amount (PhP)

9034

June 21, 2001

4,600

Philippine Lumber

MBTC 103214898

67,000.00

SBTC 0301-261982-001

MBTC 1032214896

241,200.00

SBTC 0301-261982-001

308,200.00

9115

May 25, 2001

4,750 out

Philippine Lumber

MBTC 1030214835

116,000.00

SBTC 0301-261982-001

of 5,850

MBTC 1030214833

116,000.00

SBTC 0301-261982-001

MBTC 1030214836

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

116,000.00

SBTC 0301-261982-001

MBTC 1030214834

79,750.00

SBTC 0301-261982-001

MBTC 1030214849

58,000.00

MBTC 124-5 [Magno Lim]

MBTC 1030214848

87,000.00

MBTC 124-5 [Magno Lim]

MBTC 1030214847

116,000.00

MBTC 124-5 [Magno Lim]

688,750.00

9117

May 22, 2001

9,950

Mapalo Trucking

PNB 0015659

616,100.00

SBTC 0301-261982-001

PNB 0015661

597,800.00

SBTC 0301-261982-001

1,213,900.00

9120

June 6, 2001

900 out of 5,100

Alonzo Trucking

MBTC 1140171726

113,400.00

MBTC 124-5 [Magno Lim]

113,400.00

9123

June 22, 2001

2,700 out of 7,100

Mapalo Trucking

[no details]

123,300.00

[no details]

[no details]

246,600.00

[no details]

369,900.00

9126

June 19, 2001

1,800 out of 7,100

Alonzo Trucking

MBTC 114071731

244,800.00

EPCIB 71820-8 [Magno Lim]

244,800.00

9130

June 27, 2001

500

Rommeleens Enterprises

DBP 0000155348

68,500.00

SBTC 0301-261982-001

68,500.00

Per records,[4] the accused was branch manager of Union Cement Corporation (UCC) for the Tuguegarao City

area. At the UCC office in Isabela, he shared an office room with Restituto P. Renolo, Branch Manager for the province. On June 29, 2001, at about noon, the accused confided to Renolo that he had misappropriated company funds. Renolo advised him to explain his misdeeds in writing to Assistant Vice-President and Head of UCC-North Luzon Reynaldo S. Santos (AVP Santos).

Later that day, at about 5:00 p.m., the accused told Renolo that he would be going to Tuguegarao City. Just before Renolo left the office, he saw on the accused's table a piece of partly-folded paper, which turned out to be a handwritten letter of the accused to AVP Santos, in which he admitted taking company funds and enumerated the particular accounts and amounts involved. Renolo took the letter home, read it over the phone to AVP Santos at about 7:00 p.m., and faxed it to AVP Santos the following day.

AVP Santos, in turn, sent a copy of the letter to the top management of UCC, which then instructed the Group Internal Audit of the Phinma Group of Companies to conduct a special audit of the UCC-Tuguegarao City Branch. Antonio M. Dumalian, AVP and Head of the Group Internal Audit, organized the audit team composed of Onisimo Prado, as head, with Emmanuel R. Reamico, Adeodato M. Logronio, and Glenn Agustin, as members.

The audit team conducted the special audit of the UCC-Tuguegarao City Branch from July 3 to July 25, 2001. They interviewed several cement buyers/dealers, among them Wilma Invierno of Rommeleen's Enterprises, Arthur Alonzo of Alonzo Trucking, Robert Cokee of Philippine Lumber, and Russel Morales of Mapalo Trucking. All four executed affidavits attesting that UCC cement bags were sold directly to them instead of to dealers with credit lines and that, as payment, they issued "Pay to Cash" checks pursuant to the instruction of the accused.

AVP Santos and Dr. Francis Felizardo, Senior Vice-President (SVP) and Head of the Marketing Group of UCC, met with the accused at the UCC Sales Office in Poro Point, San Fernando City, La Union. In that meeting, the accused admitted misusing company money, but pleaded to them not to terminate him as he was willing to pay back the amount from his salary on installment. He also asked them not to file charges against him.

In a Report dated August 8, 2001, the Group Internal Audit confirmed the veracity of the June 29, 2001 handwritten admission letter of the accused and his July 20, 2001 Certification enumerating the names of the specific bank accounts, specific bank holders, and the banks wherein he had deposited the funds of UCC-Tuguegarao City Branch. It appeared that the total unremitted collections of the accused from May 25, 2001 to June 23, 2001 amounted to PhP 6,572,750.

UCC found that the accused gravely abused the trust and confidence reposed on him as Branch Manager and violated company policies, rules, and regulations. Specifically, he used the credit line of accredited dealers in favor of persons who either had no credit lines or had exhausted their credit lines. He diverted cement bags from the company's Norzagaray Plant or La Union Plant to truckers who would buy cement for profit. In these transactions, he instructed the customers that payments be made in the form of "Pay to Cash" checks, for which he did not issue any receipts. He did not remit the checks but these were either encashed or deposited to his personal bank account at Security Bank & Trust Co. (SBTC)-Tuguegarao City Branch with Account No. 0301-261982-001 or to the accounts of a certain Magno Lim at MetroBank and Equitable PCIBank, both in Tuguegarao City. Conchito Dayrit, Customer Service Officer and Representative of SBTC-Tuguegarao City, confirmed the findings of the UCC internal auditors through the accused's Statement of Account showing the various checks deposited to his account, and which subsequently cleared.

Upon arraignment on August 6, 2002, the accused entered a plea of "not guilty" to the seven separate charges of qualified theft.[5] Trial on the merits ensued.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The Ruling of the RTC

On March 24, 2008, the RTC rendered its Decision, acquitting the accused in Criminal Case Nos. 9120, 9123, and 9126, but finding him guilty beyond reasonable doubt of committing Qualified Theft in Criminal Case Nos. 9034, 9115, 9117, and 9130. The dispositive portion reads:

> WHEREFORE, premises considered, the Court renders judgment thus:
>
> - In Criminal Case No. 9034: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
>
> - In Criminal Case No. 9115: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
>
> - In Criminal Case No. 9117: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
>
> - In Criminal Case No. 9120: finding the accused NOT GUILTY, as there is no showing how he profited from deposits he made to the account of Mr. Magno Lim;
>
> - In Criminal Case No. 9123: finding the accused NOT GUILTY by reason of insufficiency of evidence;
>
> - In Criminal Case No. 9126: finding the accused NOT GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
>
> - In Criminal Case No. 9130: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft.
>
> In view of the foregoing, in the imposition of the penalties upon the accused, this Court is guided by the following doctrinal pronouncement of the Supreme Court in People v. [Mercado], G.R. No. 143676, February 12, 2003:
>
> "Appellant asserts that the trial court erred in applying the proper penalty. As reasoned by appellant, the penalty for Qualified Theft under Article 310 of the Revised Penal Code is prision mayor in its minimum and medium periods, raised by two degrees. Hence, the penalty high by two degrees should be reclusion temporal in its medium and maximum periods and not reclusion perpetua as imposed by the trial court. Being a divisible penalty, the Indeterminate Sentence Law could then be applied.
>
> On the other hand, [appellee] cites the cases of People v. Reynaldo Bago and People v. Cresencia C. Reyes to show that the trial court properly imposed the penalty of reclusion perpetua.
>
> We agree with the appellee that the trial court imposed the proper penalty."

In accordance with the doctrine laid down in People v. Mercado, the accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Accused is ordered to restitute the private complainant the total amount of TWO MILLION TWO HUNDRED SEVENTY NINE THOUSAND THREE HUNDRED FIFTY PESOS (Php 2,279,350.00) covering the amount represented by the checks involved in these cases.

Set the promulgation of this Decision on 15 April 2008, at 8:30 o'clock in the morning.

SO ORDERED.[6]

In convicting the accused, the RTC relied on his admission when he testified on February 15, 2007 and his Memorandum of the fact of his having deposited the checks payments from UCC cement sales in his personal account with SBTC, Tuguegarao City Branch. Contrary to the accused's argument, the RTC found that he did not

hold his collections in trust for UCC, since he was never authorized by UCC to retain and deposit checks, as testified to by AVP Santos. Moreover, the RTC found fatal to accused's defense his handwritten letter, dated June 29, 2001, addressed to AVP Santos, which reads in part, "Sir, I regret to say that a total amount of PhP 6,380,650.00 was misused by me for various reasons,"[7] which the accused admitted to in open court during his testimony on February 15, 2007.

Aggrieved, accused appealed his conviction before the CA.

The Ruling of the CA

On August 24, 2009, the appellate court rendered the appealed decision, affirming the findings of the RTC and the conviction of accused-appellant. The fallo reads:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5, in Criminal Case Nos. 9034, 9115, 9117 and 9130, dated March 24, 2008 and promulgated on April 15, 2008, finding accused-appellant guilty beyond reasonable doubt of the crime of Qualified Theft is hereby AFFIRMED and UPHELD.
>
> With costs against the accused-appellant.
>
> SO ORDERED.[8]

Accused-appellant argued that, first, the Informations indicting him for Qualified Theft did not adequately inform him of the nature of the offense charged against him; and second, he had juridical possession of the subject checks, not merely material possession; hence, the qualifying circumstance of "grave abuse of confidence" cannot be appreciated against him.

The CA, however, found that accused-appellant only had material possession of the checks and not juridical possession[9] as these checks payments were made to UCC by its customers and accused-appellant had no right or title to possess or retain them as against UCC. The fact that accused-appellant was obliged, as per company policy, to immediately turn over to UCC the payments he received from UCC customers was attested to by the prosecution witness, UCC Branch Manager Renolo. Thus, the CA concluded that there was neither a principal-agent relationship between UCC and accused-appellant nor was accused-appellant allowed to open a personal account where UCC funds would be deposited and held in trust for UCC.

Hence, We have this appeal.

The Office of the Solicitor General, representing the People of the Philippines, submitted a Manifestation and Motion,[10] opting not to file any supplemental brief, there being no new issues raised nor supervening events transpired. Accused-appellant manifested also not to file a supplemental brief.[11] Thus, in resolving the instant appeal, We consider the sole issue and arguments accused-appellant earlier raised in his Brief for the Accused-Appellant before the CA.

Accused-appellant raises the same sole assignment of error already passed upon and resolved by the CA, in that "THE TRIAL COURT ERRED IN CONCLUDING THAT, BASED ON THE EVIDENCE, THE ACCUSED IS GUILTY OF QUALIFIED THEFT."[12]

The Court's Ruling
The appeal is bereft of merit.

Accused-appellant argues that the prosecution failed:

> (a) To establish that he had material possession of the funds in question;

(b) To refute the authority given to him by UCC;
(c) To establish the element of "taking" under Art. 308 of the Revised Penal Code (RPC);
(d) To establish that the funds were taken without the consent and knowledge of UCC;
(e) To establish the element of "personal property" under Art. 308 of the RPC; and
(f) To establish, in sum, the ultimate facts constitutive of the crime of Qualified Theft under Art. 310, in relation to Art. 308, of the RPC.

For being closely related, We will discuss together the arguments thus raised.

Article 308 of the Revised Penal Code (RPC), which defines Theft, provides:

> 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.
>
> Theft is likewise committed by:
>
> 1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
>
> 2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
>
> 3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

Thus, the elements of the crime of Theft are: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.[13]

Theft is qualified under Art. 310 of the RPC, when it is, among others, committed with grave abuse of confidence, thus:

> 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.)

The elements of Qualified Theft committed with grave abuse of confidence are as follows:

- 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.[14] (Emphasis supplied.)

All of the foregoing elements for Qualified Theft are present in this case.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

First. The presence of the first and second elements is abundantly clear. There can be no quibble that the fund collections through checks payments--all issued payable to cash--are personal properties belonging to UCC. These funds through checks were paid by UCC clients for the deliveries of cement from UCC. One with the courts a quo, We will not belabor this point in the fifth argument raised by accused-appellant.

Second. The third element is likewise abundantly clear. The collected amounts subject of the instant case belonged to UCC and not to accused-appellant. When accused-appellant received them in the form of "Pay to Cash" checks from UCC customers, he was obliged to turn them over to UCC for he had no right to retain them. That he kept the checks and deposited them in his account and in the accounts of Magno Lim knowing all the while that these checks and their proceeds were not his only proves the presence of unlawful taking.

As the trial court aptly pointed out, accused-appellant's theory that he only kept the funds in trust for UCC with the elaborate explanation that once the checks cleared in his account then he remits them to UCC is completely incredulous. For one, accused-appellant has not adduced evidence that he indeed remitted the funds once the corresponding checks were cleared. For another, accused-appellant could not explain why he deposited some of the checks he collected in the accounts of Magno Lim in MetroBank (MBTC Account No. 124-5) and Equitable PCIBank (EPCIB Account No. 71820-8). Moreover, accused-appellant's contention of such alleged management practice[15] is unsupported by any evidence showing that prior to the events in mid-2001 there was indeed such a practice of depositing check collections and remitting the proceeds once the checks cleared.

Third. The element of intent to gain is amply established through the affidavit[16] of Wilma Invierno of Rommeleen's Enterprises, one of UCC's customers, who confirmed that she had been sold cement bags instead of to dealers with credit lines and she was required by accused-appellant to issue "pay to cash" checks as payment. The affidavits of Arthur Alonzo[17] of Alonzo Trucking, Robert Cokee[18] of Philippine Lumber, and Russel Morales[19] of Mapalo Trucking similarly attested to the same type of sale and payment arrangement. In so doing, accused-appellant facilitated the collection of "pay to cash" checks which he deposited in his bank account and in the bank accounts of Magno Lim. Thus, the fourth element of intent to gain is duly proved.

Fourth. Equally clear and undisputed is the presence of the fifth element. Accused-appellant admitted having received these checks and depositing them in his personal account and in the accounts of Magno Lim. Thus, the element of taking was accomplished without the use of violence or intimidation against persons, nor of force upon things.

Fifth. That UCC never consented to accused-appellant's depositing the checks he collected in his or other accounts is demonstrated by the immediate action UCC took upon being apprised of the misappropriation and accused-appellant's confession letter. UCC lost no time in forming a special audit group from the Group Internal Audit of Phinma Group of Companies. The special audit group conducted an internal audit from July 3 to 25, 2001 and submitted a Special Audit Report[20] dated August 8, 2001, showing that the total unremitted collections of accused-appellant from the period covering May 25, 2001 through June 23, 2001 amounted to PhP 6,572,750.

AVP Santos and UCC SVP and Head of Marketing Group Dr. Felizardo met with accused-appellant who admitted misappropriating company funds. AVP Santos testified[21] in open court on what transpired in that meeting and accused-appellant's verbal admission/confession. And with the findings of the auditors that not only did accused-appellant unlawfully take UCC funds but he also committed the offense of violating company policies, rules, and regulations, UCC was compelled to file seven criminal complaints against accused-appellant. This swift and prompt action undertaken by UCC argues against the notion that it consented to accused-appellant's act of depositing of check proceeds from company sales of cement products in his account or

in the accounts of Magno Lim.

Sixth. That accused-appellant committed the crime with grave abuse of confidence is clear. As gathered from the nature of his position, accused-appellant was a credit and collection officer of UCC in the Cagayan-Isabela area. His position entailed a high degree of confidence, having access to funds collected from UCC clients. In People v. Sison,[22] involving a Branch Operation Officer of Philippine Commercial International Bank (PCIB), the Court upheld the appellant's conviction of Qualified Theft, holding that "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."[23] In People v. Mercado,[24] involving a manager of a jewelry store, the Court likewise affirmed the appellant's conviction of Qualified Theft through grave abuse of confidence.

In the instant case, it is clear how accused-appellant, as Branch Manager of UCC who was authorized to receive payments from UCC customers, gravely abused the trust and confidence reposed upon him by the management of UCC. Precisely, by using that trust and confidence, accused-appellant was able to perpetrate the theft of UCC funds to the grave prejudice of the latter. To repeat, the resulting report of UCC's internal audit showed that accused-appellant unlawfully took PhP 6,572,750 of UCC's funds.

The courts a quo's finding that accused-appellant admitted misappropriating UCC's funds through the appropriation of the subject checks is buttressed by the testimonies of Renolo and Santos,[25] who heard and understood accused-appellant's extrajudicial confession. True enough, they were competent to testify as to the substance of what they heard from accused-appellant--his declaration expressly acknowledging his guilt to the offense--that may be given in evidence against him.[26]

That he deposited most of the subject checks in his account was proved by accused-appellant's statement of account with SBTC (Account No. 0301-261982-001) through the testimony of Conchito Dayrit, the Customer Service Officer and representative of SBTC-Tuguegarao City Branch.[27]

Moreover, [28] dated July 20, 2001, attesting to the fact of the ownership of the bank accounts where he deposited the checks he collected from UCC clients, which reads:

> 07/20/01
>
> To whom it may concern:
>
> This is to certify that to my knowledge, the owner of the following bank accounts are as follows:
>
> Bank account Owner
>
> SBC - TUG 0301261982001 B. G. Mirto
> MBTC - TUG 124-5 Magno Lim
> EPCI - TUG 71320-8 Magno Lim
>
> This certification is issued for whatever purpose it may serve.
>
> (Sgd.) Bernard G. Mirto 7/20/01
> Signature over printed name date

Further, as can be amply gleaned from accused-appellant's handwritten admission and duly borne out by the internal audit team's findings, he deliberately used a scheme to perpetrate the theft. This was aptly pointed out by the CA, which We reproduce for clarity:

> UCC found that accused-appellant gravely abused the trust and confidence reposed on him as Branch Manager

> and violated company policies, rules and regulations. He did not remit collections from customers who paid "Pay to Cash" checks. He used the credit line of accredited dealers in favor of persons who did not have credit lines or other dealers who had exhausted their credit line. He diverted cement bags from Norzagaray Plant or La Union Plant to truckers who would buy cement for profit. In these transactions, he instructed dealers that check be made in the form of "pay to cash". He did not issue them receipts. The checks were either encashed or deposited to accused-appellant's personal account No. 0301-261982-001 at Security Bank & Trust Co. (SBTC) Tuguegarao Branch or deposited to the accounts of a certain Mr. Magno Lim maintained at MetroBank and EquitablePCIBank, both located at Tuguegarao City.[29] (Emphasis supplied.)

It is, thus, clear that accused-appellant committed Qualified Theft. And as duly pointed out above, even considering the absence of the handwritten extrajudicial admission of accused-appellant, there is more than sufficient evidence adduced by the prosecution to uphold his conviction. As aptly pointed out by the trial court, the prosecution has established the following:

> - That checks of various customers of UCC were written out as bearer instruments. Payments in cash were also made.
>
> - These were received by the accused Mirto who deposited them in his personal account as well as in the account of Mr. Magno Lim.
>
> - The monies represented by the checks and the case payments were consideration for bags of cement purchased from the UCC, the complainant-corporation.
>
> - The accused Mirto was never authorized nor was it part of his duties as branch manager to deposit these proceeds in his account or in the account of Mr. Magno Lim.[30]

Defense of Agency Unavailing

As his main defense, accused-appellant cites the testimonies of prosecution witnesses Restituto Renolo and Reynaldo Santos to impress upon the Court that he is an agent of UCC. And as an agent, so he claims, an implied trust is constituted by his juridical possession of UCC funds from the proceeds of cement sales:

> ATTY. CARMELO Z. LASAM: Mr. Renolo, can you tell us the specific duties and responsibilities of your area sales managers?
>
> RESTITUTO RENOLO: The duties and responsibilities of an area sales officer, we are in charge of the distribution of our products, cement and likewise its collection of its sales.[31]
>
> x x x x
>
> ATTY. RAUL ORACION: Okay, now as Assistant Vice-President for Marketing and supervisor of all area sales offices and branch managers, could you tell the duties and responsibilities of the accused Bernard Mirto at that time?
>
> REYNALDO SANTOS: x x x, also collect sales and for the cash for the collection of our sales.[32]

To accused-appellant, he had authority to collect and accept payments from customers, and was constituted an agent of UCC. As collection agent of UCC, he asserts he can hold the collections in trust and in favor of UCC; and that he is a trustee of UCC and, therefore, has juridical possession over the collected funds. Consequently, accused-appellant maintains there was no unlawful taking, for such taking was with the knowledge and consent of UCC, thereby negating the elements of taking personal property and without the owner's consent necessary in the crime of Qualified Theft.

This contention fails.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The duty to collect payments is imposed on accused-appellant because of his position as Branch Manager. Because of this employer-employee relationship, he cannot be considered an agent of UCC and is not covered by the Civil Code provisions on agency. Money received by an employee in behalf of his or her employer is considered to be only in the material possession of the employee.[33]

The fact that accused-appellant had authority to accept payments from customers does not give him the license to take the payments and deposit them to his own account since juridical possession is not transferred to him. On the contrary, the testimony he cites only bolsters the fact that accused-appellant is an official of UCC and had the trust and the confidence of the latter and, therefore, could readily receive payments from customers for and in behalf of said company.

Proper Penalty

The trial court, as affirmed by the appellate court, sentenced accused-appellant to restitute UCC the aggregate amount of PhP 2,279,350, representing the amount of the checks involved here. The trial court also imposed the single penalty of reclusion perpetua. Apparently, the RTC erred in imposing said single penalty, and the CA erred in affirming it, considering that accused-appellant had been convicted on four (4) counts of qualified theft under Criminal Case Nos. 9034, 9115, 9117 and 9130. Consequently, accused-appellant should have been accordingly sentenced to imprisonment on four counts of qualified theft with the appropriate penalties for each count. Criminal Case No. 9034 is for PhP 308,200, Criminal Case No. 9115 is for PhP 688,750, Criminal Case No. 9117 is for PhP 1,213,900, and Criminal Case No. 9130 is for 68,500 for the aggregate amount of PhP 2,279,350.

Now to get the proper penalty for each count, We refer to People v. Mercado,[34] where We established that the appropriate penalty for Qualified Theft is reclusion perpetua based on Art. 310 of the RPC, which provides that "[t]he crime of [qualified] theft shall be punished by the penalties next higher by two degrees than those respectively specified in [Art. 309] x x x." (Emphasis supplied.)

Applying the computation made in People v. Mercado to the present case to arrive at the correct penalties, We get the value of the property stolen as determined by the trial court, which are PhP 308,200, PhP 688,750, PhP 1,213,900 and PhP 68,500. Based on Art. 309[35] of the RPC, "since the value of the items exceeds P22,000.00, the basic penalty is prision mayor in its minimum and medium periods to be imposed in the maximum period, which is 8 years, 8 months and 1 day to 10 years of prision mayor."[36]

And in order to determine the additional years of imprisonment, following People v. Mercado, We deduct PhP 22,000 from each amount and each difference should then be divided by PhP 10,000, disregarding any amount less than PhP 10,000. We now have 28 years, 66 years, 119 years and 4 years, respectively, that should be added to the basic penalty. But the imposable penalty for simple theft should not exceed a total of 20 years. Therefore, had accused-appellant committed simple theft, the penalty for each of Criminal Case Nos. 9034, 9115 and 9117 would be 20 years of reclusion temporal; while Criminal Case No. 9130 would be from 8 years, 8 months and 1 day of prision mayor, as minimum, to 14 years of reclusion temporal, as maximum, before the application of the Indeterminate Sentence Law. However, as the penalty for Qualified Theft is two degrees higher, the correct imposable penalty is reclusion perpetua for each count.

In fine, considering that accused-appellant is convicted of four (4) counts of Qualified Theft with corresponding four penalties of reclusion perpetua, Art. 70 of the RPC on successive service of sentences shall apply. Art. 70 pertinently provides that "the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period. Such maximum period shall in no case exceed forty years." Applying said rule, despite the four penalties of reclusion

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

perpetua for four counts of Qualified Theft, accused-appellant shall suffer imprisonment for a period not exceeding 40 years.

WHEREFORE, the appeal is hereby DENIED. The appealed CA Decision dated August 24, 2009 in CA-G.R. CR-H.C. No. 03444 is AFFIRMED with MODIFICATION in that accused-appellant Bernard G. Mirto is convicted of four (4) counts of Qualified Theft and accordingly sentenced to serve four (4) penalties of reclusion perpetua. But with the application of Art. 70 of the RPC, accused-appellant shall suffer the penalty of imprisonment for a period not exceeding 40 years.

Costs against accused-appellant.

SO ORDERED.

Peralta, Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

---

[1] Rollo, pp. 2-14. Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Magdangal M. de Leon and Ricardo R. Rosario.

[2] CA rollo, pp. 15-28. Penned by Presiding Judge Jezarene C. Aquino.

[3] Records, Vol. 1, p. 1.

[4] Rollo, pp. 3-5.

[5] Records, Vol. 1, p. 38.

[6] CA rollo, pp. 26-28.

[7] Records, Folder of "Formal Offer of Prosecution's Evidence," pp. 27-28, Exhibit "A."

[8] Rollo, p. 14.

[9] [It is well-settled that when the money, goods, or any other personal property is received by the offender from the offended party in trust or on commission or for administration, the offender acquires both material or physical possession and juridical possession of the thing received.] Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner (Chua-Burce v. Court of Appeals, G.R. No. 109595, April 27, 2000, 331 SCRA 1, 13, cited in Matrido v. People, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 544).

[10] Rollo, pp. 25-27, dated January 6, 2011.

[11] Id. at 39-40, Manifestation and Motion dated April 18, 2011.

[12] Id. at 41.

[13] Cruz v. People, G.R. No. 176504, September 3, 2008, 564 SCRA 99, 110; citing People v. Bago, G.R. No. 122290, April 6, 2000, 330 SCRA 115, 138-139.

[14] People v. Puig, G.R. Nos. 173654-765, August 28, 2008, 563 SCRA 564, 570; Roque v. People, G.R. No. 138954, November 25, 2004, 444 SCRA 98, 120.

[15] Rollo, p. 61.

[16] Records, Folder of "Formal Offer of Prosecution's Evidence," p. 39, Exhibit "N."

[17] Id. at 35, Exhibit "K."

[18] Id. at 253-254, Exhibit "Z."

[19] Id. at 264-265, Exhibit "II."

[20] Id. at 39-50, Exhibit "O."

[21] TSN, November 17, 2004.

[22] G.R. No. 123183, January 19, 2000, 322 SCRA 345.

[23] Id. at 364-365.

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

[25] Testimony of Restituto Renolo, TSN, September 23, 2003; testimony of Reynaldo Santos, TSN, November 17, 2004.

[26] People v. Mercado, supra note 24, at 752-753; citing People v. Maqueda, G.R. No. 112983, March 22, 1995, 242 SCRA 565, 590.

[27] TSN, July 27, 2006, pp. 28-29.

[28] Records, Folder of "Formal Offer of Prosecution's Evidence," p. 28, Exhibit "B."

[29] Rollo, pp. 4-5.

[30] CA rollo, pp. 25-26.

[31] TSN, September 23, 2003, p. 26.

[32] TSN, November 17, 2004, p. 27.

[33] Matrido v. People, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 543.

[34] Supra note 24.

[35] Art. 309(1) of the RPC on simple theft provides:

1. 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 prision mayor or reclusion temporal, as the case may be.

[36] People v. Mercado, supra note 24, at 758.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.