

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CAROLINA BOQUECOSA, ACCUSED-APPELLANT.

*G.R. No. 202181. August 19, 2015*

Ponente: PEREZ, J.

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### PEREZ, J.:

For review is the conviction of accused-appellant Carolina Boquecosa (Boquecosa) for the crime of qualified theft in Criminal Cases No. CBU-66829 and No. CBU-66833, entitled "People of the Philippines v. Carolina Boquecosa," by the Regional Trial Court (RTC) in a Joint Judgment[1] dated August 11, 2006, which was affirmed in toto by the Court of Appeals in a Decision[2] dated June 22, 2011.

#### The Information

##### Criminal Case No. CBU-66829

That on March 3, 2003, and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the vault custodian and Sales Clerk of Gemmary Pawnshop and Jewellery located at Juliana Trade Center, Borromeo Street, this city, and as such had access to the things inside the vault of said Gemmary Pawnshop and Jewellery, with grave abuse of trust and confidence, with deliberate intent, with intent of gain and without the knowledge and consent of the owner thereof, did then and there take, steal and carry away therefrom cash, assorted jewelry items and cell cards all in all valued at P400,658.80, belonging to Gemmary Pawnshop and Jewellery, to the damage and prejudice of the latter in the amount aforestated.

CONTRARY TO LAW.[3]

##### Criminal Case No. CBU-66833

That on or about the 1[st] day of March 2003, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the vault custodian of Gemmary Pawnshop and Jewellery, and as such had access to the personal property of the latter, with deliberate intent, with intent of gain, and without the consent of the owner with grave abuse of confidence, did then and there[,] take, steal and carry away the following:

a) one (1) yellow gold necklace Barbada design (Japanese gold) with gold pendant 102.6 gms., 18 karats valued ----- P41,000.00

b) one (1) gold bracelet Barbada design (Japanese gold) 41.0 gms. 18 karats valued ----- P16,600.00  
P56,600.00

valued all in all at P56,600.00 from the pawnshop of and belonging to Gemmary Pawnshop and Jewellery, to the damage and prejudice of the latter in the amount aforestated.

CONTRARY TO LAW.[4]

#### Version of the Prosecution:

Boquecosa was a sales clerk and vault custodian of Gemmary Pawnshop and Jewellery (Pawnshop), located at Juliana Trade Center, Borromeo Street, Cebu City. On March 1, 2003, a customer wanted to renew a loan. As part of the Pawnshop's practice, before the Pawnshop could approve the loan renewal, the item pledged would be shown to the customer as proof that the item was still intact. This time, however, contrary to the Pawnshop's practice, the item was not shown to the customer because when Boquecosa tried to retrieve the pieces of jewelry from the vault, she was not able to find them. Nevertheless, the Pawnshop still approved the loan renewal.

As a sales clerk, Boquecosa was also in-charge of receiving orders for class rings and for their payments. However, upon conducting an inventory,[5] the Pawnshop discovered that Boquecosa failed to remit the proceeds from the class ring orders. As to the pieces of the pawned jewelry, these were nowhere to be found in spite of a thorough search. Because of the incident, the management conducted an inventory. Based on the findings, P457,258.80 worth of pieces of jewelry, unremitted class ring collections, and cell card sales was missing.[6]

The management summoned Boquecosa to explain about the missing pieces of jewelry, and the unremitted class ring collections and cell card sales. Upon inquiry, Boquecosa broke down and cried, and admitted that she used the missing class ring collections and cell card sales for her own personal gain. Boquecosa also admitted that she took the missing pieces of jewelry (necklace and bracelet), and pawned them at M. Lhuiller Pawnshop and H. Villarica Pawnshop using fictitious names. To redeem the pieces of jewelry, Mark Yu, the Pawnshop's proprietor, used the letter of authority executed by Boquecosa.

#### Version of the Defense:

When a customer requested for a loan renewal, Tirso Gaña, the attending sales clerk, asked Boquecosa to retrieve the customer's pledged pieces of jewelry from the vault. However, Boquecosa only found the necklace and could not find the bracelet.

Apprehensive of the missing pieces of jewelry, the Pawnshop's management conducted an inventory. Boquecosa was summoned to answer for the missing pieces of jewelry, and for the unremitted class ring collections and cell card sales, but she denied having anything to do with the matter. Boquecosa averred that she was not the only one who had access to the vault because a certain Arlene, her co-employee, also had such access to the vault.

On arraignment, Boquecosa pleaded not guilty.

The RTC conducted a joint trial on the two (2) sets of Information. During trial, the prosecution presented the following witnesses, Charlo Baron, Mark Yu, Juanita Colina, Gina Pelenio, Gina Yu, Melissa Mendoza, and Tirso Gania.[7] On the other hand, the defense presented Boquecosa as its sole witness.

#### The Ruling of the Lower Courts

The RTC found Boquecosa guilty of the crime of qualified theft based on the pieces of evidence presented, together with Boquecosa's admission in open court, which is bolstered by the latter's admission that she had sole access to the vault. The RTC Joint Judgment reads:

WHEREFORE, in view of the foregoing, the court finds accused CAROLINA BOQUECOSA guilty beyond reasonable doubt of Qualified Theft and hereby sentences her to suffer RECLUSION PERPETUA. The court also orders her to indemnify or return to the private offended party the amount of P457,258.80, but without subsidiary imprisonment in case of insolvency.

IT IS SO ORDERED.[8]

On appeal, the Court of Appeals affirmed the RTC Joint Judgment in toto. The Court of Appeals rejected Boquecosa's contention that her guilt was not proven beyond reasonable doubt because the pieces of evidence presented by the prosecution were merely circumstantial evidence. According to the Court of Appeals, "an accused can be convicted even if no eyewitness is available, as long as sufficient circumstantial evidence [has been] presented by the prosecution to prove beyond [reasonable] doubt that the accused committed the crime." [9]

#### Our Ruling

The defense raised the lone assigned error that the trial court erred in convicting Boquecosa for the crime charged despite the fact that the prosecution failed to prove her guilt beyond reasonable doubt because nobody was able to directly identify her as the one who stole the pieces of jewelry, unremitted class ring collections, and cell card sales.

According to the defense, the prosecution witnesses failed to sufficiently establish the culpability of Boquecosa because their testimonies were unacceptable and unworthy of belief, without any particular evidence to prove that it was really Boquecosa who took all the missing items. [10] Stated otherwise, there was no evidence, even circumstantial, that would prove that it was Boquecosa who took all the missing items. Boquecosa further averred that anyone could have taken the missing items because almost everyone had access to the vault. "The position of [Boquecosa] as a vault custodian cannot by itself hold her accountable [for] all the losses especially since all the other employees have access to the vault." [11] Further, Boquecosa's admission referred only to the necklace and bracelet, collectively valued at P56,600.00, and not to those which were covered in Criminal Case No. CBU-66829 in the amount of P400,658.80.

The defense's arguments fail to impress.

For the prosecution of the crime of theft as punishable under Article 308 of the Revised Penal Code, the prosecution must be able to establish the presence of the following elements: "(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." [12]

To qualify the crime of simple theft to qualified theft, the crime of theft must be committed with grave abuse of confidence. [13] All of the elements for qualified theft are present in this case. Proceeding from the fact that Boquecosa was, on the dates of the crime, a sales clerk and vault custodian of the Pawnshop, she admitted having pawned the missing pieces of jewelry. The act, of course, presupposes a previous taking of the items.

So that even if the prosecution witnesses' testimonies and pieces of evidence were discredited, Boquecosa had already bound herself to the theft. Boquecosa admitted that after she took the pieces of jewelry from the vault, she pawned the same to M. Lhuiller and H. Villarica Pawnshops:

Q

I have here a copy dated March 14, 2003 signed by Mark Yu, General Manager of Gemmary Pawnshop and Jewelry, please tell the Honorable Court if you have received this copy of the letter?

A

Yes.

xxxx

Q

In this letter is it not, can you read a loud (sic) the second paragraph of this letter?

A

(Witness is reading the second paragraph of the said letter dated March 14, 2003): “Furthermore, partial audit of collection of class ring order reveals that collections are not remitted and were pocketed by you for personal gain wherein the amount involved as of this time is P174,000.00”(sic) while audit is on progress.”

xxxx

COURT:

Is that portion that you have just read, the second paragraph, are (sic) true?

A

Yes Your Honor.

xxxx

COURT TO WITNESS:

What kind of jewelry did you pawn?

A

Necklace.

COURT TO WITNESS:

And other assorted jewelry you pawned?

A

No [Y]our Honor.

COURT OF WITNESS: Only necklace?

A

Necklace and bracelet only Your Honor.

xxxx

Q

But why did you pawn them?

A

Because of the difficulty I have Your Honor.

Q

What difficulty you want to tell the court, you are not married?

A

I have three (3) children Your Honor and I am also the one who provide (sic) my family.[14] (Emphases and underscoring supplied)

Boquecosa's judicial admission is conclusive.[15] In fact, procedurally, by Boquecosa's admission,[16] the production of evidence is dispensed with. Further, the party who judicially admits a fact is precluded from challenging her former judicial admissions. A party cannot subsequently retract a former statement that is inconsistent with the previous admission.[17] However, this rule is not without exceptions. The exceptions are when (1) it is shown that the admission was made through palpable mistake, and (2) it is shown that no such admission was in fact made. The present case does not fall within any of the exceptions. Hence, Boquecosa's admission shall be binding upon her, which she cannot subsequently retract. By Boquecosa's judicial admission, the trial court could have adjudged the case sans the prosecution's presentation of evidence. In effect, Boquecosa's contention that there is no direct evidence, which may prove her guilt, is irrelevant.

The presence of all the first four (4) elements is clear. Boquecosa took the pieces of jewelry, class ring collections, and cell card sales, without the consent of the Pawnshop's owner and the owner of the pieces of jewelry, and with intent to gain.

With regard to the intent to gain, it is "presumed to be alleged in an information, in which it is charged that there was unlawful taking (apoderamiento) and appropriation by the offender of the things subject of asportation." [18]

Indeed, Boquecosa's claims that she was not the only employee who had sole access to the vault and that a certain Arlene, a co-employee, also had that opportunity were sufficiently clarified:

Q

Everytime you were absent were you required to file a leave of absence or application for leave of absence?

A

Yes.

Q

So, during those times xxx that you were absent who usually took over your function as a vault custodian?

A

None, they will just pick up another employee from the accounting department, there was no vault custodian who will replace, she is my co-worker... upstairs.

COURT TO WITNESS:

Q

What about Arlene? [Y]ou mean when you are absent Arlene is also absent?

A

The work of Arlene is merely to open the vault, Your Honor, everytime I am absent.

Q

But you told the court that you have three functions, so, insofar as the the (sic) function of opening the vault Arlene can do that?

A

Yes.

Q

But with your two other functions this will be referred to your other co-employees?

A

Yes.

ATTY. FERNANDEZ:

Excuse me, Your Honor, may I ask for the cancellation of her answers with regards (sic) to that she was the only one who can open/Arlene only opens the vault when she is absent and that there are other persons present during the opening like Tirso Gania, Charlo.

Court:

No, no, it's not during the opening, her other functions.

ATTY. FERNANDEZ:

Yes, Your Honor, but she mentioned that everytime Arlene opens she is only limited to opening and there's another person who is with her like Charlo, Tirso Gania and Melissa Mendoza, she mentions of names, Your Honor, that's why I would like to ask for a clarification of that.

ATTY. AGAN:

No, she did not mention, Your Honor, that everytime Arlene opens the vault there is a presence of other persons, Your Honor, her testimony is only to the effect that it was Arlene who is assigned to open the vault in her absence but it's the other employees who took over her other functions, that's the only, just for clarification.[19]

xxxx

Q

Is it not that in that proceeding you were asked and I quote:

“Q

Did you not tell this Honorable Court during the last hearing that there was only a certain Arlene who has access to the vault other than you?

A

Arlene only open (sic) the vault but she could not get inside.”

xxxx

“Court:

You have a policy that Arlene is not allowed to enter the vault?

A

Yes.”

Now, please tell the Honorable Court which is true, your testimony in the other court proceeding, in the other court case against you that Arlene can only open the vault but cannot get inside or your testimony now that Arlene can open the vault and get inside?

A:

She can get inside.

Q

So, your testimony on August 13, 2004 before this Honorable Court is wrong, is that you are trying to tell this Court?

A

Yes.[20]

Contrary to Boquecosa's allegation that her admission referred only to the necklace and bracelet, collectively valued at P56,600.00, and not to those which were covered in Case No. CBU-66829 in the amount of P400,658.80, the pieces of evidence, bolstered by her admission, belie her denial. From the final report of the inventory,[21] to the Order slips of the unremitted payment for the class rings, which were found in Boquecosa's possession,[22] to the pawnshop tickets which the Pawnshop retrieved from Boquecosa on which Boquecosa used fictitious names to pawn the missing pieces of jewelry,[23] to the letters executed by Boquecosa, authorizing Mark Yu to redeem the missing pieces of jewelry,[24] and to the fact that it was only Boquecosa who had access to the vault, they all combine as a whole body of evidence, leading to the guilt of Boquecosa.

Finally, Boquecosa's position as vault custodian entailed a high degree of trust and confidence. As such custodian, Boquecosa was entrusted with the vault combination. Boquecosa gravely abused that trust and confidence, which her employer reposed upon her.

The penalty for qualified theft is based on the value of the property stolen, which, in this case, is P457,258.80. 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 P457,258.80, which leaves a difference of P435,258.80. This amount is then divided by P10,000.00, disregarding any amount less than P10,000.00. The resulting quotient of 43 is equivalent to 43 years, which is added to the basic penalty.[25] Because Boquecosa committed qualified theft, her penalty is two degrees higher than the penalty for simple theft. However, contrary to the maximum penalty imposable in simple theft, which cannot exceed twenty (20) years, the penalty for qualified theft has no such limitation. Her penalty exceeds twenty (20) years of reclusion temporal, the penalty that should be imposed, therefore, is reclusion perpetua.[26]

WHEREFORE, the appeal is DISMISSED. The Joint Judgment dated August 11, 2006 of the Regional Trial Court, Branch 5, Cebu City, in Criminal Case Nos. CBU-66829 and CBU-66833, as affirmed by the Court of Appeals, is AFFIRMED in toto, with legal interests from finality until satisfaction of judgment.

### **SO ORDERED.**

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

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[1] Penned by Presiding Judge Ireneo Lee Gako, Jr.; records (Criminal Case No. CBU-66829), pp. 156-162.

[2] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes concurring; rollo, pp. 3-16.

[3] Records (Criminal Case No. CBU-66829), p. 1.

[4] Records (Criminal Case No. CBU-66833), p. 1.

- [5] Inventory Exhibits “A,” “A-1,” “B,” “B-2” to “B-6,” “K”; records (Criminal Case No. CBU-66829), pp. 14-19, 22-27, and 9-11, respectively.
- [6] Exhibits “A” and “A-1”; *id.* at 14-19.
- [7] Also known as Tirso Gaña in other documents.
- [8] *Supra* note 1, at 161-162.
- [9] *Supra* note 2, at 14, citing *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 513.
- [10] CA rollo, pp. 33-34.
- [11] *Id.* at 35.
- [12] *Cruz v. People*, 586 Phil. 89, 99 (2008), citing *People v. Bago*, 386 Phil. 310, 334-335 (2000).
- [13] *People v. Tanchanco*, G.R. No. 177761, April 18, 2012, 670 SCRA 130.
- [14] TSN, November 15, 2005, pp. 15-21. (Emphases and underscoring ours.)
- [15] *Encinas v. National Bookstore, Inc.*, 485 Phil. 683 (2004).
- [16] RULES OF COURT, Rule 129, Sec. 4.
- [17] *Constantino v. Heirs of Constantino, Jr.*, G.R. No. 181508, October 2, 2013, 706 SCRA 580.
- [18] *Cruz v. People*, *supra* note 12, at 100.
- [19] TSN, August 12, 2004, pp. 4-6.
- [20] TSN, November 15, 2005, pp. 11-12. (Emphases and underscoring ours.)
- [21] Exhibits “A” and “A-1”; records (Criminal Case No. CBU-66829), pp. 14-19.
- [22] Exhibits “B,” “B-2” to “B-6,” and “K”; *id.* at 22-27 and 9-11, respectively.
- [23] Exhibits “A” and “B”; records (Criminal Case No. CBU-66833), pp. 40-41.
- [24] Exhibits “C” and “D”; *id.* at 42-43.
- [25] *Miranda v. People*, 680 Phil. 126 (2012).
- [26] *Grace San Diego y Trinidad v. The People of the Philippines*, G.R. No. 176114, April 08, 2015.

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