

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABRAHAM SERANILLA Y PAPA, ELY SANCHEZ Y IBARRIENTOS AND FRANK DE JOYA Y BORBON, RESPONDENTS.

G.R. No. 54090, May 09, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the then Court of First Instance of Rizal, Branch 28, Pasay City finding "the accused ELY SANCHEZ and ABRAHAM SERANILLA guilty of qualified theft and FRANK DE JOYA guilty of simple theft beyond reasonable doubt" and sentencing "them to suffer LIFE IMPRISONMENT for the accused SANCHEZ and SERANILLA and from TWELVE (12) YEARS of prision mayor, as minimum, to TWENTY (20) YEARS of reclusion temporal, as maximum, for the accused DE JOYA and all xxx to pay the costs."

The information filed against the accused-appellant's alleged:

"That on or about the 3rd day of August, 1973. in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with grave abuse of confidence being then employees of the Philippine Air Lines as manifesting clerk and cargo checker, respectively, and as such has access to the Air Cargo Office at the Philippine Air Lines at the Manila International Airport, aided and abetted by their co-accused, Frank de Joya_y Borbon, to whom some of the said checks were delivered for encashment and/or negotiation and who had prior knowledge and was a participant in the criminal design of his co-accused to commit the offense end with intent to gain, did then and there wilfully, unlawfully and feloniously take, steal and carry away from said Air Cargo Office of the Philippine Air Lines, MIA. a cargo freight consisting of packages containing dollar checks of different denominations amounting to \$127,450.51, part of which is hereto attached and marked Annex "A" and made an integral part of the information, belonging to the First National City Bank, Manila and being sent by it via air freight of the Philippine Air Lines to the United States, to the damage and prejudice of the Philippine Air Lines and the First National City Bank." (Rollo, p. 7)

The prosecution presented witnesses who testified as summarized by the lower court in the following manner:

"Leonardo Lansang. Deposit Teller of the Clark Field Branch of the First National City Bank, on his having dispatched cashed checks to their main office in Manila after taking taped listing thereof duly accompanied by the corresponding ticket (Exhs. C and C-1);

"Amable Malicsi, Pro-Manager of the Control Division of the First National City Bank, Manila, on the shipment of the checks in question consigned to their office in San Francisco, California for clearing via PAL thru the Emery Freight Corporation; the non-receipt by their San Francisco office of the same as per cable advices (Exhs. D-1, X, and X-1); and the damage suffered by their office on the peso equivalent of \$127,450.51 as well as interest and the margin between the buying and selling rate of said checks for failure of their account to be credited and the drawer of said checks to be debited by the respective value thereof;

"Paul Katigbak, Manila Manager of the Emery Freight Corporation, on their having handled a package for

FNCB for air shipment to the United States as per "Shippers Letter of Instruction for Contract of Carriage' (Exh. Z) for which they cut out Air Waybill No. 079-50746345 (Exh. W-13-A); their having turned over said package to PAL as per transfer manifest (Exh. W-13); and PAL Cargo Supervisor Meynard Halili having wrote (sic) him a letter to the effect that said package did not reach its destination (Exh. Y);

"Meynard M. Halili. Supervisor of the Cargo Handling Section of PAL, on Abraham Seranilla being a manifest clerk of PAL whose duty was to accept shipment and document the transfer while Ely Sanchez was a cargo checker whose duty was to insure that whatever is manifested for the flight is loaded in the pushcart for towing to the aircraft; and their having received on August 3, 1973 from Emery Freight Corporation the shipment of the package of checks in question consigned to FNCB San Francisco but which was never received by the latter and their investigation showed that it was never loaded in the aircraft as per his letter to Paul Katigbak of the Emery Freight Corporation (Exh. Y);

M/Sgt. Isaias Perez of the P.C. 2nd C.I.S. Team at Camp Vicente Lim in Laguna, on the manner they effected the arrest of Frank de Joya and Abraham Seranilla and their having confiscated dollar checks from them by their team whose mission was to apprehend members of a syndicate engaged in the pilferage of U.S. dollar checks and his having signed as witness on the inventory of said checks (Exhs. K and K-1);

"Sgt. Ernesto B. Balaquiao. Investigator of the 2nd C.I.S District in Canlubang, Laguna, also on the manner they effected the arrest of the accused Frank de Joya and Abraham Seranilla and their having confiscated from them dollar checks as per the inventory thereof he prepared (Exhs. K [same as Exh. T]; U (same as Exh. K-1 and his having taken the statement of Abraham Seranilla (Exhs. O and P) and that of Ely Sanchez (Exhs. Q and R); and

"Frisco P. Fallore. Supervising Investigation Agent and Assistant Chief of Investigation of the 2nd C.I.S. District at Canlubang, Laguna, also on the manner they effected the arrest of Frank de Joya and Abraham Seranilla as per mission order dated August 22, 1973 (Exh. W-1) and the Arrest, Search and Seizure Order and his having taken the statement of Frank De Joya (Exh. W-6)." (Rollo. pp. 12-14)

The finding of guilt beyond reasonable doubt of the three accused is based on the prosecution's evidence, and the admission made by them in their respective statements (Exhs. W-6, P, Q and R) which they executed after their arrest and the fact that bunches of the stolen checks in question were confiscated from accused Frank De Joya and Abraham Seranilla (Exhs. K and L-1) without any satisfying explanation as to their possession of missing checks.

All of the three accused appealed from the lower court's decision and each filed a separate brief.

The accused De Joya raises the following assignments of errors in this appeal:

I

"THE LOWER COURT ERRED IN CONSIDERING THE EXTRAJUDICIAL STATEMENTS OF THE THREE ACCUSED AND OF THE WIFE OF ACCUSED ELY SANCHEZ.

II

"THE LOWER COURT ERRED IN FINDING CONSPIRACY AMONG THE THREE ACCUSED IN THE COMMISSION OF THE CRIME CHARGED IN THE INFORMATION.

III

"THE LOWER COURT ERRED IN FINDING THAT THE RESPECTIVE STATEMENTS OF THE THREE ACCUSED ARE COMPLETE WITH DETAILS WHICH ONLY THOSE WHO HAVE PERSONAL KNOWLEDGE OF THEM CAN TESTIFY TO AND COULD NOT HAVE BEEN SUPPLIED BY THE INVESTIGATORS.

IV

"THE LOWER COURT ERRED IN FINDING THAT BUNCHES OF THE STOLEN CHECKS WERE CONFISCATED FROM THE ACCUSED FRANK DE JOYA.

V

"THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED FRANK DE JOYA DID NOT PROFESS HIS INNOCENCE RIGHT THEN AND THERE AT THE TIME OF HIS ARREST IN HOLIDAY HILLS.

VI

"THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED FRANK DE JOYA IS NOT A CREDIBLE AND RELIABLE WITNESS.

VII

"THE LOWER COURT ERRED IN FINDING THAT THE CIS INFORMER DING NACO HAD THEN NO MOTIVE TO IMPLICATE THE ACCUSED FRANK DE JOYA.

VIII

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE SUBJECT CHECKS ARE WITHOUT VALUE.

IX

"THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED FRANK DE JOYA IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF SIMPLE THEFT CHARGED IN THE INFORMATION.- (Brief for accused-appellant Frank de Joya, pp. 1-3)

Meanwhile, the accused Sanchez states in his assignments of errors that:

I

"THE LOWER COURT ERRED IN HOLDING THAT CONSPIRACY AMONG THE THREE ACCUSED IN THE COMMISSION OF THE CRIME CHARGED HAS BEEN CLEARLY ESTABLISHED BY THE EVIDENCE.

II

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE OFFENSE CHARGED INSPITE OF THE FACT. AS SHOWN BY THE VERY EVIDENCE OF THE PROSECUTION, THAT THE CHECKS IN QUESTION ARE WITHOUT COMMERCIAL VALUE.

III

"ASSUMING THE CULPABILITY OF APPELLANT SANCHEZ. THE LOWER COURT NEVERTHELESS ERRED IN FINDING HIM GUILTY OF QUALIFIED THEFT INSTEAD OF SIMPLE THEFT." (Brief for accused-appellant Ely Sanchez, pp. 1-2)

Appellant Seranilla, raises as assignment of errors, the following:

I

"THE LOWER COURT ERRED IN ADMITTING IN EVIDENCE THE ALLEGED EXTRAJUDICIAL ADMISSIONS OF THE APPELLANT ABRAHAM SERANILLA_y PAPA.

II

"THE LOWER COURT ERRED IN ADMITTING IN EVIDENCE THE ALLEGED CHECKS OBTAINED ILLEGALLY FROM THE APPELLANT ABRAHAM SERANILLA_y PAPA.

III

"THE LOWER COURT ERRED IN NOT ACQUITTING THE APPELLANT ABRAHAM SERANILLA y PAPA. (Brief for accused-appellant Abraham Seranilla_y Papa, pp. 1-2)

The uniform and principal argument of the appellants is that their extrajudicial confessions were improperly admitted as evidence against them and used to prove the existence of conspiracy. These statements were allegedly obtained through threats, intimidation and violence and are, therefore, inadmissible as evidence.

We find no merit in the argument.

The alleged repudiation by appellants of their respective confessions on the ground that these were extorted by force, coercion and intimidation is as noted by the lower court negated by their statements which contained details which only they could have known. (People v. Toledo, 140 SCRA 259; People v. Ribadajo, 142 SCRA 637).

We agree with the observations of the Solicitor General that:

"The confessions of appellants contain details which were known to them only and could not have been supplied by the investigating agents of the CIS.

For example when de Joya was asked:

'Q.

From the time you were introduced by your friend with Mr. Seranilla, will you tell us if you have been with a business transaction with him?

He answered,

"A.

I have no business transaction with him except when on the middle part of July 1973, when I cashed for him a Travellers check worth \$200.00." (Exh. W-6)

"The above answer of de Joya revealing his transaction with Seranilla a month before the crime at hand was committed is a fact that shows the spontaneity of de Joya's confession. The answer of de Joya could not have been invented by the investigators. (People v. Ty Siu Wong, L-32529, May 12, 1978, 83 SCRA 125)

"Likewise, the confessions of Seranilla and Sanchez contain badges of voluntariness.

"Seranilla's statement contains the following:

"xxx xxx xxx

T.

Na ang sabi niya (Mr. de Joya) na noong kayo ay magkakilala na, mayroon kang ibinigay sa kanyang Treveller's check na nagkakahalaga ng \$200.00 upang palitan, totoo rin ba ito?

S. Totoo pong mayroon akong ibinigay sa kanya na Traveller's Check ngunit hindi ko sinabi sa kanya na palitan.

xxx xxx xxx

T.

Papano naman napunta sa iyo ang mga chekeng dolyar na nakumpiska ng mga ahente ng CIS kay Frank de Joya na ayon kay Frank de Joya ay nanggaling sa iyo?

S.

Ang nasabing chekeng dolyar pong iyan ay ibinigay sa akin ni Ely Sanchez noong Agosto 3, 1973, at makalipas nga po ang mga Hang araw ay bumalik si FRANK DE JOYA sa aming bahay at tinanong sa akin kung mayroon na. Ang sabi ko naman sa kanya ay mayroon na, at kanyang tiningnan ang nasabing cheke. Matapos na makita ang mga cheke ay sinabi sa akin na dadalhin na raw niya ang mga chekeng nabanggit at saka sinabi pa niya sa akin na wdla pa raw siyang pera na maibibigay sa akin sa oras na iyon. Ang sabi ko naman po sa kanya ay maghanap ka muna ng pera bago ko ibigay ang cheke. Ngayon sa ayaw ko pong ibigay ay inuperan po niya ako ng lupa. Ngunit sinabi ko sa kanya na ako ay hindi interesado sa lupa. Ngayon sa pagpupumilit ni FRANK DE JOYA na ibigay ko sa kanya ang mga chekeng dolyar at napilitan ako na ibigay sa kanya dahil sa pangako na siya (FRANK DE JOYA) ay babalik kaagad para bigyan ako ng kanyang pangako sa akin, hanggang sa noong bumalik si FRANK DE JOYA noong gabi ng Agosto 22, 1973 at kasama ng mga CIS. "

(Exh. P)

"And the sworn statement of Sanchez declares the following points which could not have been fabricated by the CIS agents:

"xxx xxx xxx

"T. Sabihin mo nga sa amin kung ano ang inyong lihim na transaksyon ni Abraham Seranilla tungkol sa mga tsekeng nabanggit?

"S.

Nagpunta po sa bahay namin sina Abe may kasamang nagngangalang Frank na pinakilala niya sa akin at sinabi nilang dalawa na ako ay inuperan na kung ikukuha ko raw sila ng Tseke at may binanggit pang presyo na kung maganda raw at P1.00 sa bawat' dolyar at P0.50 sentimos bawat dolyar kung hindi maganda at may binanggit pang tungkol sa lupa. Ang sabi ko naman wala akong kaalam- alam sa mga bagay na iyan at hindi linya ang ganoong trabaho. At noong magla last week ng Julio 1973 ay pumunta ulit silang dalawa sa aming bahay at ganoon din po ang sabi sa akin katulad noong una nagpoporsigi sa ganoong transaksyon. Ang sabi ko ng ulit hindi ako maaaring gumawa ng ganyan dahil ibig kung magtrabaho ng malinis (At this juncture the affiant cries) at bilang tiyo ko siya pinipilit niya akong gumawa ng trabaho at maganda raw pagkakitaan. Ngayon noong unang linggo nga ng Agosto 1973, bandang mga hapon ng ako'y galing sa eroplanong sinalubong ko na galing sa abroad na nakaassigned sa aking schedule, pagpasok ko po sa officina dala-dala ko ang mga papeles ng eroplano na incoming. Sinabi sa akin ni Abraham at tinuro sa akin ang isang pakete na nasa loob ng aming compound ng aming officina na kunin ko raw. Gayon pa man din hindi ko binigyan ng pansin ang kanyang sinabi at tuloy tuloy akong nagayos ng aking papeles at saka lumabas ulit ako sa officina papuntang eroplano para chekin ko ang kargamentong ibinaba na galing sa ibang bansa at doon ko nakita iyong mga kargamentong seguro po may mga tatlong postcard at nakita ko na may nalaglag na kargamento at aking pinulot at sa mga oras na iyon ay nandodoon din si Abraham Seranilla at aking ibinigay sa kanya. Pagkatapos po umalis na ako at nag-check na ako ng kargamento na ibinaba sa eroplano na kasama ko ang custom guardpapunta sa Bonded warehouse. Sinabi ko po naman sa kay Abraham Seranilla noon pa na hindi ako maaaring kumuha ng hindi ko pagaari dahil ibig kung mabuhay ang familia sa mabuting paraan. ")

xxx xxx xxx

T. Noong maiabot mo ang kahon kay Abraham, saan naman niya dinala?

S. Noong iabot ko po sa kanya ay inipit niya sa kanyang kilikili at lumakad papuntang eroplano sa loob ng MIA. "

(Exh. Q)

xxx xxx xxx

T. Matapos halughugin ang inyong bahav ng mga CIS agent, ano ang nangyari?

S.

Sila po ay nakakuha ng aking ari-arian katulad ng mga sumusunod: 1. Isang (1) Baril na Dibola (S & W) Caliber 38; 21 bala ng calibre 38; Lima (5) na basyo ng bala ng calibre 38; \$101.00 cash na dollar (U.S.); Apat napirasong Relos na Citizen na panglalaki at isang pirasong Relo na Orient na pangbabae.

xxx xxx xxx

T. Mayroon ka bang pinanghahawakang katibavan na dokumento sa inyong baril na ito?

S. Opo. Iyan ay lisensiyado sa pangalan ko at iyan ay aking ipinabago ang lisensiya at katunayan na ito ang kopva ng (Request for Renewal of License) ng aking baril, (Affiant exhibiting to the investigation (sic) a duplicate copy of Request for Renewal of License in the name of Ely I. Sanchez for his FA Revolver S & W Cal. 38 SN-739163 dated 29 May 1973 which has a mark "This will serve as a temporary license to possess your FAS good for 60 days pending approval of your renewal lie and verified by: Illigihle' at FEU. PC 'on 13 June 1973).

T. Ang mga relong nakumpiska sa invo, mavroon ka rin bang katibavan na makapagpapaiunav na binili ninvo?

S. Opo. Katunayan na ito ang resibo noong hilhin ng aking asawa na si Concepcion S. Sanchez sa Alfa Trading sa 653 Quezon Blvd., Manila noong ika-5 ng Julio 1973, (Affiant showing to the Investigator Invoice Receipt No. 1420 dated July 1973 for purposes of identification).

T. Papaano mo naman nakuha ang hang Daan at hang Dolyar (\$101.00) na cash na ito?

S. Ipinadalapo sa akin ng aking mga kamag-anak sa America, noong Diciembre 1972.

T. Sino-sino ang iyong mga kamag-anak sa America na nagpadala sa iyo ng mga salaping Dolyar na ito?

S. Sina Ginoo at Ginang Bienvenido Trajano at ang kanyang anak na si Christopher Trajano na iyan pong dolyar na nabanggit sa itaas na nakumpiska ng mga CIS Agents ay iniregalo sa aking asawa at mga anak noon nga pong nakaraan na Diciembre 1972.

(Exh. R)".

xxx xxx xxx

(Consolidated Brief for the Appellee, pp. 5-11)

It is significant that the alleged involuntary confessions contained both admissions and denials. (*People v. Banaan*, 142 SCRA410).

In the transaction between Seranilla and De Joya a month before the crime, De Joya claimed that he cashed the \$200.00 Traveller's check of Seranilla. On the other hand, Seranilla stated that he merely asked De Joya to check whether or not it was negotiable.

Also, another factor indicating voluntariness of the confessions is that the appellants tried to minimize their roles in the offense or tried to exculpate themselves. (*People v. Ty Siu Wong*, *supra*).

Appellant de Joya stated:

"xxx xxx xxx

"Q.

Will you tell us, why you are (sic in possession of this (sic) Dollar Checks when you are (sic) caught or arrested by a team of CIS Agents?

A.

I was informed by Mr. Abraham Seranilla. that he had \$200.00 Traveller's Check and he asked me to cash it for him. After agreeing that he (Mr. Seranilla) would give me P50.00 as my commission, I agreed and had it changed with my friend. Then at about the first week of August, he showed me this batch of dollars which I contacted Mr. (Ding Nacu) when if it could be cashed and Mr. Nacu called me up last Saturday that it would be cashed So I told Mr. Abraham Seranilla about it. That's why. Mr. Seranilla gave it to me to have it cashed with Mr. Nacu. This is the reason why it is in my possession this afternoon."

(Exh. W-6).

Appellant Seranilla said:

T.

Ipaliwanag mo nga sa amin kung ano ang tunay mong nalalaman tungkol sa mga chekeng nakumpiska kay FRANK DE JOYA ng mga Ahente ng CIS noong Agosto 22, 1973 sa Holiday Hills, San Pedro, Laguna at ang 70 pirasong checkeng dollar na nakumpiska sa iyo ng mga ahente ng CIS noong 22 Agosto 1973 sa inyong bahay sa 3643 Lt. Garcia St., Baclaran, Paranaque, Rizal?

S.

Mangyari po noong kami nga po ay magkakilala nitong si FRANK DE JOYA doon sa aking Barberia sa Quirino Avenue, Baclaran, Paranaque, Rizal ay madalas niya akong pinupuntahan sa aming bahay sa 3643 Lt. Garcia St., Baclaran, Paranaque, Rizal at iyon ay humantong sa paghihikayat niya sa akin na kumuha ng mga chekeng dolyar sa MIA na aking pinapasukang trabaho sa paliwanag at kondisyon na ihinigay niva sa akin na ako ay kanyang bibigyan ng P0.50 sa bawal isang (1) dolyar kung mababa raw ang bill sa kanya a! kung maganda raw ang bill sa kanya av gagawin niva ng PI. 00 sa bawa V isang (1) dolyar. Malapos na sabihin niva sa akin ang kondesiyon na ito, sinabi ko sa kanva na lit ing nan ko kung magagawa ko, at siya (FRANK) ay nagpaalam na sa akin. Nang makaalis po si FRANK DE JOYA, ako po ay pumasok na rin sa aming officina sa MIA. Pagdating ko po sa officina, nakita ko po itong si ELY SANCHEZ a I ikinuwento ko sa kay ELY ang sinabi sa akin ni FRANK DE JOYA. Ang sagot po sa akin ni ELY SANCHEZ ay tilingnan daw po niva kung magagawa niva at ang maganda raw ang kondisyon na ibinigav ni FRANK DE JOYA.

xxx xxx xxx

T. Anong nangyari matapos na sabihin mo kay ELY SANCHEZ ang sinabi sa iyo nitong si FRANK DE JOYA?

S.

Pansamantalang nakalimutan ko po ang transaksyon na ito hanggang sa muling bumalik sa aking bahay itong FRANK DE JOYA at tinanong sa akin kung mayroon na raw akong nakuhang mga chekeng dolyar.

T. Kailan bumalik sa inyong bahay itong si FRANK DE JOYA?

S. Mga huling linggo na po ng buwan ng Julio 1973.

T. Ano naman ang isinagot mo kay FRANK DE JOYA?

S.

Ang sabi ko po sa kanya ay wala akong nakuha kaya ang ginawa ko sinamahan ko siya (FRANK DE JOYA) sa bahay ni ELY SANCHEZ.

T. Pag da ting na pagdating ninyo ni FRANK DE JOYA sa bahay ni ELY SANCHEZ, ano ang nangyari?

S. Kinausap po ni FRANK DE JOYA si ELY SANCHEZ.

T. Narinig mo ba ang pinag-usapan nila?

S. Opo at iyon ay tungkol din sa kondisyon na ibinigay sa akin ni FRANK DE JOYA.

T. Matapos na magusap sina ELY SANCHEZ at FRANK DE JOYA, anong nangyari?

S. Naghiwalay na po kami.

T.

Papaano naman napunta sa iyo ang mga chekeng dolyar na nakumpiska ng mga Ahente ng CIS kay Frank de Joya na ayon kay Frank de Joya ay nanggaling sa iyo?

S.

Ang nasabing chekeng dolyar pong iyan ay ibinigay sa akin ni ELY SANCHEZ noong Agosto 3, 1973, at makalipas nga po ang mga limang araw ay bumalik si FRANK DE JOYA sa aming bahay at tinanong sa akin kung mayroon na. Ang sagot ko naman sa kanya ay mayroon na, at kanyang lining nan and nasabing cheke. Matapos na makita ang mga cheke ay sinabi sa akin na dadalhin na raw niya ang mga chekeng nabanggit at sinabi pa niya sa akin na wala pa raw siyang pera na maibibigay sa akin sa ora.. na iyon. Ang sabi ko naman po sa kanya ay mag-hanap ka muna ng pera bago ko ibigay ang cheke. Ngayon sa ayaw ko pong ibigay ay inuperan po niya ako ng lupa. Ngunit sinabi ko sa kanya na ako ay hindi interesado sa lupa. Ngayon sa pagpupumilit ni FRANK DE JOYA na ibigay ko sa kanya ang mga chekeng dolyar at napilitan ako na ibigay sa kanya dahil sa pangako na siya (FRANK DE JOYA) ay babalik kaagadpara bigyan ako ng kanyang pangako sa akin, hanggang sa noong bumalik si FRANK DE JOYA noong gabi ng Agosto 22, 1973 ay kasama ng mga CIS."

(Exh. P)"

(Consolidated Brief for the Appellee, pp. 11-16)

Also, as held in the case of *People v. Ladrera* (150) SCRA 113, 126):

"The records are bereft of any reason why the role enunciated in the cases of *People v. Mada-I Santalani* (93 SCRA 317), *People v. Balane* (123 SCRA 614) and *People v. Villanueva* (128 SCRA 488) should not be applied "that where the defendants did not present evidence of compulsion of duress nor violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim, all these were considered by this Court as factors indicating voluntariness."

The trial court did not commit any error in admitting the extrajudicial confessions in the instant case even if the accused were not assisted by counsel inasmuch as said confessions were executed before April 26, 1983. (*People v. Nabaluna*, 142 SCRA 446).

Conspiracy is present in the commission of the offense as shown by the appellants' extrajudicial confessions. (*People v. Cortaya*, 134 SCRA 526). As noted by the lower court, the interlocking confessions give no room for doubt of appellants' conspiracy. {See *People v. Rodriguez*, 135 SCR A 483}

The accused De Joya contends that the lower court itself doubts the existence of conspiracy considering the variance in the penalties and considering that Sanchez and Seranilla were held guilty for qualified theft while he was held guilty for simple theft only. ,

Conspiracy implies concert of design and not participation in every detail of execution (*People v. Mojica*, 10 SCRA 515). Therefore, the trial court did not err in convicting the three accused of theft. And since there was abuse of confidence in» the cases of Sanchez and Seranilla considering that they were PAL employees at the time of the offense, the lower court properly convicted them of qualified theft.

Appellant Sanchez contends that assuming without admitting that he was guilty of theft, he should be guilty only of simple theft. He alleges that theft by an employee does not necessarily designate the crime as qualified theft. The bag containing the subject checks is part of the outgoing cargo of which he was not in-charge, considering that he is an "incoming clerk." Also, the offended party in this case is the First National City Bank (being the owner of the checks) with which Sanchez has no ties whatsoever.

As noted by the Solicitor General:

"The foregoing arguments of Sanchez are effectively refuted by the fact that he had access to the place where the taking took place. Such access changes the complexion of the crime committed to that of qualified theft. (Decisions of Supreme Court of Spain, July 14, 1904 and Oct. 24, 1904; *People v. Jimenez*, CA-G.R. No. 12094-R, Jan. 29, 1955, cited in the Revised Penal Code, by LB, Reyes, Bk. II, 1971 Ed., p. 604). Sanchez testified on his access to the negotiable instruments herein involved as follows:

Q. Now, will you inform the Honorable Court the nature of your work with PAL sometime in August, 1973?

A I was a cargo clerk at that time assigned as incoming cargo checker.

Q Will you tell us some of your duties as such incoming cargo checker?

A

To receive all papers regarding incoming shipments, to take care of those papers and turn over the same to the

Customs authorities, like for example, the Customs inspector, the Customs guard and the representative of the bonded warehouse. (Tsn, pp. 35-36, July 9, 1977).

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Q. While performing your duties as incoming cargo clerk do you recall of any unusual incident?

A. Yes, sir.

Q. What was that incident you were referring to, please tell this Honorable Court?

A.

After I have fixed the papers regarding the incoming shipment I went on my way to the bonded warehouse to check the cargoes and it was then that I saw a cargo fall from a pushcart.

Q. Now, did you know where was this pushcart you mentioned going then when one of the packages fell down?

A. It was bound for an airplane which was scheduled to depart for a foreign country. (Tsn., pp. 37-38, July 19, 1977)

xxx xxx xxx

COURT:

Q. Did you pick it up?

A Yes, Your Honor,

(p. 42, TSN, July 9. 1977)

The fact that the FNCB which is the owner of the stolen negotiable notes is not the employer of appellant Sanchez is of no moment. The relation of independence, guardianship, or vigilance between the accused and the offended party' makes the offense that of qualified theft. (People v. Koc Song. 63 Phil. 369; III Aquino. The Revised Penal Code. 1532 (1976 ed.) (Consolidated Brief for the Appellee, pp. 30-31).

The appellants next question the checks subject of the crime.

Appellant Seranilla contends that the checks were illegally seized from him and are, therefore, inadmissible.

There is no merit to this contention. The search and seizure made were by virtue of the arrest, search and seizure order (ASSO) No. 1240 as mentioned in the operation investigation report (Exhibit 10) of the CIS agents (Tsn., November 4, 1976, pp. 5-15).

On the other hand, the accused De Joya and Sanchez allege that there was no crime committed considering the finding that the checks were of no commercial value.

It is of no moment that there was real or actual gain. The important consideration is that there was an intent to gain. It is one of the essential elements of theft. (*People v. Mercado*, 65 Phil. 665).

The other assigned errors center on the factual findings of the trial court.

We have carefully studied the records of this case and we find no reason to deviate from the well-settled rule that the findings of fact of the trial court on the credibility of witnesses are generally accorded respect because of its privilege of examining the demeanor of the witnesses as they testify (*People v. Aboga*, 147SCRA414).

WHEREFORE, the judgment appealed from is hereby AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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