

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.SAMUEL T. JACALAN, ACCUSED-APPELLANT.

G.R. No. 55050. February 10, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Court of First Instance of Batanes in Criminal Case No. 466, finding herein appellant guilty of Qualified Theft.

We affirm.

I

The information filed against appellant reads as follows:

"That on or about the 27th day of July 1970, or somewhere (sic) thereabouts, in the municipality of Basco, province of Batanes, and within the jurisdiction of this Honorable Court, said Samuel T. Jacalan, being then the Assistant Agent in charge of the Philippine National Bank, Batanes Agency, situated at Basco, Batanes, and as such Assistant Agent is entrusted with and is responsible and accountable for all the monies received, collected and deposited therein, and having access to all said monies, including office equipment, supplies and materials and forms, machines, steel filing cabinets, safe compartments, mosler safe, table drawers, of said agency, did then and there wilfully, unlawfully and feloniously, with grave abuse of confidence reposed on him by his employer, the Philippine National Bank, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away cash money in different denominations from said Philippine National Bank, Batanes Agency, all amounting to ONE HUNDRED TWENTY SIX THOUSAND ONE HUNDRED NINETY PESOS (P126,190.00) belonging to the Philippine National Bank to the damage and prejudice of the owner in the said amount of P126,190.00, Philippine Currency" (Rollo, p. 4).

Appellant, on arraignment, entered a plea of "not guilty." After trial, the court found him guilty of the crime charged and sentenced him to suffer the "penalty of RECLUSION PERPETUA with the accessory penalties provided for by law; to indemnify the Philippine National Bank in the amount of P126,190.00 without subsidiary imprisonment in case of insolvency and to pay the costs" (Rollo, p. 12).

After the denial of his motion for reconsideration, appellant appealed directly to this Court pursuant to Section 5, par. 2(d), Article X of the 1973 Constitution.

II

Appellant was the Assistant Agent and Acting Cashier of the Philippine National Bank (PNB), Batanes Agency, from 1968 until September 1970.

The People's evidence, as upheld by the trial court, shows that in the morning of July 7, 1970, appellant went on leave from his work at the PNB, to attend to personal matters in Laoag City. Before leaving and in accordance

with their usual arrangement, appellant designated Clemente Ablaza, the Cashier and Paymaster in the Office of the Provincial Treasurer, as acting part-time cashier of the Batanes Agency during his absence.

Of the total amount of P323,119.93 in appellant's custody, he turned over to Ablaza the amount of P166,629.93 and retained the balance of P158,490.00.

On July 21, 1970, two PNB inspectors, Alfredo Cruz and Gilbert Sampang, arrived in Basco, Batanes to look into and review the field operations of the Batanes Agency thereat and to audit the cash disbursements of appellant.

Upon arrival, the two inspectors proceeded to the Batanes Agency and introduced themselves to Ablaza, Romulo Fajardo, the bank accountant and Mariano Zabala, the bank janitor. After learning that appellant went on leave on July 7, the inspectors decided to conduct their cash examination in the presence of Ablaza and the two other bank employees. They found that the declared cash of the bank as of July 20, 1970 was P263,351.06, but the actual physical count yielded only P104,861.00. On inquiry, Ablaza informed them that a certain sum was retained by appellant, which he could have kept in the steel filing cabinet in his office.

On July 22, Ablaza sent a telegram to appellant, requesting him to return to Basco immediately in view of the audit examination.

On July 23, the inspectors went to the airport expecting appellant to arrive. When he did not show up, the two proceeded to the bank and decided to open the filing cabinet in the presence of Ablaza, Fajardo, Zabala and P.C. Capt. Gregorio Abad, the Provincial Commander.

The inspectors forced open the filing cabinet, starting with the Mosler safe thereof. There, they found the keys and the combinations to the drawers of the cabinet, as well as the drawers of appellant's office table. The first drawer of the filing cabinet yielded coins in the amount of P2,300.00. In the second drawer, the inspectors found P126,190.00.

On July 24, Fajardo turned over the P126,190.00 to Ablaza who, in the presence of Fajardo, Zabala and the inspectors, placed the said amount in the Mosler safe.

In the morning of July 26, the two inspectors left for Manila on the very same plane that brought in appellant from Laoag.

Upon learning from Fajardo that the inspectors forcibly opened the filing cabinet, appellant flared up. He intimated to Fajardo that he would complain that the amount of P126,190.00 found in the second drawer was stolen by the inspectors, and threatened that should Fajardo and Ablaza not cooperate with him, he would inflict harm on them.

Ablaza confirmed what Fajardo told appellant, which made the latter angrier. At about 3:30 P.M., appellant, together with Ablaza and Fajardo, went to the bank. Thereat, appellant saw that the left drawer of his office table had not been opened and examined by the inspectors. He then ordered Fajardo to empty the said drawer of all papers and instead place all the uninventoried accountable forms inside. Ablaza then showed appellant the money inside the Mosler safe.

On July 27, appellant and Fajardo went to the bank at 8:00 A.M. Fajardo, on appellant's instructions, prepared letters addressed to the chiefs of the various government offices in Basco, inviting them to witness the opening of the left drawer of appellant's table and to count the money in his and Ablaza's custody. When Ablaza arrived at 8:30 A.M., he was ordered by appellant to bring out the P126,190.00 from the Mosler safe, count P30,000.00 therefrom and set it on top of appellant's table. He was also ordered by appellant to place the rest of the money, totalling P96,190.00, inside the first drawer of the steel filing cabinet. Appellant closed the filing cabinet and

opened the left drawer of his table there he placed the P30,000.00.

Appellant instructed Ablaza to inform the PNB North Luzon Regional Office by telegram that he could not yet assume his duties due to mental shock. Ablaza did as he was told. Fajardo also left the bank to deliver the invitations to their respective addressees, leaving appellant alone in the bank.

In response to the invitations, representatives from the Provincial Auditor's Office, the Bureau of Public Highways and the Batanes Constabulary Command repaired to the bank.

Appellant then opened the left drawer of his table which contained the amount of P30,000.00. The Mosler safe was also opened, revealing the amount of P85,698.24. The cash was counted and inventoried by the representative of the Provincial Auditor.

At about noontime, three telegrams from the PNB North Luzon Regional Office were received at the PNB Agency. One was addressed to appellant, relieving him as Assistant Agent and Acting Cashier and requesting him to proceed to Manila for further instruction. The second telegram was addressed to Ablaza, relieving him as part-time cashier, and directing him to turn over all accountabilities and cash to Fajardo, who was designated in the third telegram as the Acting Assistant Agent and Cashier of the bank.

Appellant prepared two documents which he later presented to Ablaza. One was a debit-credit ticket for the amount of P126,190.00 and the other a "Receipt for Safekeeping." Both documents stated that the amount of P126,190.00, consisting of P120,000.00 in six bundles of P20.00 bills and P6,190.00 in mutilated notes, was taken for safekeeping from Ablaza, then acting cashier, by the two inspectors, when they made a cash count on July 21, 1970. Ablaza noticed that the two documents bore the typewritten names of the two inspectors without, however, any signatures appearing thereon. Appellant asked Ablaza to sign as witness to the documents. Ablaza protested saying that contrary to the entries therein, he did not actually give the P126,190.00 or any amount for that matter to the two inspectors. Ablaza eventually signed the documents out of fear.

That same afternoon, appellant borrowed from Ablaza several documents for the alleged purpose of photocopying them in Manila. Among the documents borrowed were the debit-credit ticket and the Receipt for Safekeeping.

On July 28, appellant left for Manila. On July 30, he sent a telegram to Fajardo, advising the latter to get from one Angel Barcelona (who was arriving in Batanes from Manila) the documents the former borrowed from the Batanes Agency. Barcelona, however, personally delivered the documents in a brown envelope to Fajardo at the bank. Fajardo immediately opened the envelope and saw that the debit-credit ticket and the Receipt for Safekeeping already bore the signatures of Alfredo Cruz and Gilbert Sampang. The initials of another person, which turned out to be that of Gregorio Abad, was also found on the upper right margin of the debit-credit ticket. Fajardo promptly dispatched a telegram to the Northern Luzon Regional Office to confirm the signatures of Cruz and Sampang. The Regional Office wired back informing Fajardo that the two inspectors denied signing the same.

The two documents were sent by the PNB Main Office to the National Bureau of Investigation (NBI) for examination of the signatures therein. The NBI found that the signatures of Cruz and Sampang, as well as the initials of Gregorio Abad, were forged.

Another audit was forthwith conducted by the PNB at the Batanes Agency, and the results revealed a cash shortage of P126,190.00. Accordingly, administrative, criminal and civil actions were instituted against appellant.

Before this Court, appellant argues that the loss of the P126,190.00 and his alleged participation therein has not been established by any direct evidence whatsoever. According to him, since the amount of P126,190.00 has not been declared missing and that no one actually and directly saw him take away the said amount no crime was

committed and no conviction can be sustained thereon.

III

We do not agree.

The evidence establish the fact that the amount of P126,190.00 was in the custody of appellant but he failed to account and produce the same upon audit.

Appellant admitted retaining the amount of P158,490.00 in his own safe in the filing cabinet on the day he went on leave (Exhs. "HH", "HH-2", "HH-4", "N", "O", Exhs. "2-B", "2-D").

When appellant, upon his return to Basco, learned that the two inspectors failed to inspect the drawers of his office table, he made a show of opening the left drawer thereof in the presence of representatives of the various government agencies. Only the amount of P30,000.00 found in his left drawer (Exh. "NN"; Exhs. "12", "12-A") and the sum of P85,698.24, found in his safe (Exh. "OO"; Exh. "13"), totalling P115,698.24 were actually counted and inventoried.

Ablaza testified that the P30,000.00 found in appellant's left drawer came from the P126,190.00 he was ordered to take out from the Mosler safe (TSN, May 30, 1975, p. 196; Id., May 17, 1976, pp. 399-400; Id., May 19, 1976, p. 539); and that thereafter, both he (Ablaza) and Fajardo were sent on errands such that appellant was left alone in the bank (TSN, May 30, 1975, p. 199; Id., May 17, 1976, p. 400). Apparently, it was at this time that the money was set aside and taken by appellant.

The debit-credit ticket and the Receipt for Safekeeping stated that the amount of P126,190.00 was turned over by Ablaza to Inspectors Cruz and Sampang for safekeeping (Exhs. "I", "J", "T", "TT-1", "UU", and "ZZ"). The two inspectors denied having asked for and having received the amount of P126,190.00 from Ablaza. They likewise denied having executed and having signed the said documents (Exh. "A-2", p. 5; Exhs. "RR"; "RR-2; TSN, May 27, 1976, pp. 43-45). The NBI officially declared the inspectors' signatures on the two documents as forgeries (Exhs. "BB" and "EE"). Furthermore, the Receipt for Safekeeping is dated July 27, 1970, one day after the two PNB Inspectors left Batanes for Manila. Ablaza himself denied turning over the said amount to the inspectors and testified that he was intimidated by appellant into signing said documents.

It appears from the facts of the case that the Receipt for Safekeeping and the debit-credit ticket were manufactured by appellant for the specific purpose of covering up the deficiency of P126,190.00.00, and diverting suspicion to the two PNB inspectors.

A second audit was conducted at the Batanes Agency one month after appellant's relief from his position. The auditor reported that the amount of P126,190.00, was missing and said loss could not be explained (Exhs. "A", "B" and "N").

In the matter of credibility of witnesses, the rule is well-settled that unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, its factual findings should be respected (People v. Miscala, 202 SCRA 26 [1991]; People v. Arenas, 198 SCRA 172 [1991]; People v. Alvero, 187 SCRA 576 [1990]).

The crime of theft is qualified by the relation of trust between appellant and the PNB, that had created a high degree of confidence between them and which the former gravely abused (People v. Koc Song, 63 Phil. 369 [1936]). Appellant wilfully took advantage of his position, his knowledge of the safe combinations and his physical possession of the money, to carry out and consummate the theft, for which reason he should be punished accordingly.

WHEREFORE, the decision appealed from is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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