



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DELIA INES RINGOR,
Petitioner,

G.R. No. 198904

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

DEC 11 2013

X-----X

RESOLUTION

REYES, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking to annul and set aside the Decision² dated August 12, 2011 and the Resolution³ dated October 5, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 32945, which found Delia Ines Ringor (petitioner) guilty beyond reasonable doubt of qualified theft punished under Article 310 of the Revised Penal Code (RPC).

¹ Rollo, pp. 9-28.

² Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio, concurring; id. at 68-94.

³ Id. at 101.

1

The Facts

The petitioner was charged in an Information for *estafa* under paragraph 1(b), Article 315 of the RPC, docketed as Criminal Case No. 2278-K before the Regional Trial Court (RTC) of Cabugao, Ilocos Sur, which reads:

That on or about the 24th day of March, 2003, in the municipality of Sinait, province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as Sales Clerk belonging to Peoples Consumer[,] Inc., with intent to gain and with abuse of confidence, did then and there, willfully, unlawfully and feloniously by means of deceit defraud one Annelyn I. Ingan in the following manner, to wit: The said accused was assigned as Sales Clerk/Agent for the purpose of collecting sales for goods delivered to different customers one LA Currimao Inc. as in fact did collect sales in the total amount of SIXTY-SIX THOUSAND EIGHT HUNDRED SIXTY PESOS and NINETY CENTAVOS ([P]66,860.90) with the obligation to turn over the same to owner/complainant but said accused once in possession of said amount, with abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same for her own personal use and benefit and despite repeated demands made upon her by the owner to turn the amount of [P]66,860.90 said accused had deliberately refused and still refuses to deliver the same up to the present, to the damage and prejudice of the offended party in the amount of [P]66,860.90, Philippine currency.⁴

Upon arraignment on October 21, 2004, the petitioner entered a plea of not guilty to the offense charged. On November 4, 2004, the pre-trial conference was deemed terminated. Trial on the merits ensued thereafter.

The petitioner was employed as sales clerk/agent of Peoples Consumer Store (PCS) – a merchandise distributor owned by Honesto Ibarra and managed by Annelyn Ingan (Ingan). As PCS's sales clerk/agent, the petitioner scouts the towns of Sinait, Badoc, Currimao, and Batac, Ilocos Sur to look for customers, takes note of their orders, and submits the said orders to Ingan for approval. Once approved, the petitioner, together with a driver and a helper, delivers the ordered merchandise to the customers. After delivery, the petitioner turns over the delivery receipts to Ingan. Seven days after delivery, the petitioner would then collect the payment from their customers and remit the same to Ingan.

⁴

Id. at 44.

On March 24, 2003, the petitioner booked an order of grocery products from L.A. Currimao Store (LACS) in the amount of ₱68,622.90; the value, however, of the delivered merchandise to LACS only amounted to ₱66,860.90 as one item in the order was not available at that time. After delivering the merchandise to LACS, the petitioner gave a handwritten delivery receipt to Ingan.

Seven days thereafter, the petitioner informed Ingan and her brother Nestor Ibarra (Ibarra) that she lost the money she collected from LACS, claiming that she was a victim of a robbery. Later, the petitioner claimed that she lost the amount collected from LACS in a mini bus. However, upon inquiry by Ingan, the driver of the said mini bus said that the petitioner's claim was impossible since they only had a few passengers then.

After the incident, the petitioner no longer reported back to work. Neither did the petitioner remit the amount she collected from LACS. Ingan alleged that, during a meeting between her and the petitioner in a police station, in response to inquiries regarding the unremitted amount to PCS, the petitioner stated that she no longer have the amount which she collected from LACS and that she would just have to go to jail.

On the other hand, the petitioner denied that she was a sales clerk/agent of PCS, claiming that she was merely a sales lady therein. While she admitted that she solicited orders from prospective customers in various towns in Ilocos Sur, the petitioner alleged that she was not the only one who received the payments from PCS's customers. Likewise, the petitioner admitted that she delivered the merchandise to LACS, but claimed that the latter has yet to pay for the same.

The RTC Decision

On September 8, 2009, the RTC rendered a Decision⁵ finding the petitioner guilty beyond reasonable doubt of *estafa* under paragraph 1(b), Article 315 of the RPC, viz:

WHEREFORE, premises considered, the guilt of accused DELIA RINGOR having been proven beyond reasonable doubt of the crime of *Estafa*, defined and penalized under paragraph 1(b) of Article 315 of the Revised Penal Code, the Court hereby sentences her to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional* as minimum to 10 years, 8 months and 21 days of *prision mayor* as maximum.

⁵

Id. at 44-49.

Accused is hereby ordered to indemnify the Peoples Consumer Store the sum of [P]66,860.90 as actual damages.

SO ORDERED.⁶

The RTC opined that the petitioner received the merchandise to be delivered to LACS in trust for PCS, with the corresponding duty to remit to PCS the amount to be paid by LACS. The RTC held that the failure of the petitioner to account for the amount paid by LACS is evidence of misappropriation, which indubitably prejudiced PCS.

The CA Decision

On appeal, the CA rendered the Decision dated August 12, 2011, which affirmed with modification the RTC Decision dated September 8, 2009. Thus:

WHEREFORE, the trial court's Decision dated September 8, 2009 is **AFFIRMED**, subject to the **MODIFICATION** that accused appellant Delia Ringor is convicted of qualified theft and sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. The award of actual damages to private complainant in the amount of ₱66,860.90 is **AFFIRMED**.

SO ORDERED.⁷

The CA opined that the petitioner only had physical possession of the merchandise that were to be delivered to LACS and not juridical possession. Thus, even if there was proof of misappropriation, the CA held that the petitioner could not be convicted of the felony of *estafa* under paragraph 1(b), Article 315 of the RPC. Be that as it may, the CA averred that the petitioner is nevertheless liable for qualified theft under Article 310 in relation to Article 308 of the RPC, pointing out that the Information that was filed against her sufficiently alleged all the elements of the said felony.

The petitioner sought a reconsideration of the CA Decision dated August 12, 2011,⁸ but it was denied by the CA in its Resolution dated October 5, 2011.

⁶ Id. at 49.

⁷ Id. at 93-94.

⁸ Id. at 95-99.

In support of the instant petition, the petitioner claims that the CA erred in convicting her of the felony of qualified theft; that the prosecution failed to establish all the elements for the said felony. She alleges that the prosecution failed to present direct evidence showing that she indeed took the amount that was paid by LACS. In the same vein, the petitioner avers that the prosecution was not able to establish that it was indeed part of the petitioner's job description to collect the payments from PCS's customers. The foregoing circumstances, the petitioner asserts, engenders reasonable doubt as to her guilt for the felony charged.

Issue

Essentially, the issue presented for the Court's resolution is whether the CA erred in convicting the petitioner for the felony of qualified theft under Article 310 in relation to Article 308 of the RPC.

The Court's Ruling

The petition is bereft of any merit.

The felony of theft is defined under Article 308 of the RPC, viz:

Article 308. *Who are liable for theft.*—Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of neither 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.

On the other hand, Article 310 of the RPC reads:

Article 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 ours)

In *précis*, the elements of qualified theft punishable under Article 310 in relation to Article 308 of the RPC are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.⁹

All elements for the felony of qualified theft under Article 310 in relation to Article 308 of the RPC are present in this case. As to the first element, the prosecution was able to establish that the petitioner, as part of her duty as sales clerk/agent of PCS, received the payment from LACS in the amount of ₱66,860.90 for the merchandise delivered to it and that she failed to remit the same to Ingan. This fact was testified to by Ibarra during the proceedings before the RTC, thus:

Q: What about her failure to remit the value of the goods she delivered? Why do you know of this fact?

A: I was at home when she came and she did not remit any amount, ma'am.

Q: And so[,] what happened when she informed you Who was with you when she came to your house?

A: My sister, ma'am.

Q: And so[,] what happened upon having been informed, what did Delia Ringor do?

A: She informed us that she lost the money, ma'am.

Q: Did she inform you why she lost the money?

A: At first she claimed that she was a victim of a hold-up but when we were about to go and look for it she claimed again that she lost it in a mini bus, ma'am.

Q: When was that information given to you by Delia Ringor, Mr. Witness?

A: After she reported telling us that she lost the money, ma'am.

Q: So that will [be] how many days after the delivery was made by the accused?

A: About seven (7) days after the delivery, ma'am.

⁹ See *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 541, citing *People v. Bago*, 386 Phil. 310, 334-335 (2000).

x x x x¹⁰

Further, Ingan testified that:

Q: When the accused failed to report back for duty and failed to remit the amount, what did you do?

A: I informed her, sir.

Q: When you said you informed her, what form of information?

A: I called her mother because she disappeared and she fixed a date at the police station for us to talk over the matter, sir.

Q: And were you able to talk the same with the office of the police?

A: Yes, sir.

Q: What transpired during your talk at the police?

A: She told me: "That is no longer existing, I just go to jail," sir.

x x x x¹¹

The foregoing testimonies clearly prove that the petitioner received the amount paid by LACS for the merchandise delivered to it and that she failed to remit the same to PCS.

The second, third and fifth elements of qualified theft were likewise established by the prosecution; that the amount paid by LACS, taken by the petitioner without authority and consent, belongs to PCS, and that the taking was accomplished without the use of violence or intimidation against persons, or force upon things, is not disputed.

Anent the fourth element, intent to gain on the part of the petitioner was likewise established. Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Actual gain is irrelevant as the important consideration is the intent to gain.¹²

Intent to gain on the part of the petitioner is readily apparent from the testimonies of the prosecution's witnesses. Particularly, Ibarra, Ingan's brother, testified that the petitioner told him and his sister that she lost the money she collected from LACS. At first, the petitioner claimed that she was robbed. Later, she changed her story and claimed that she lost the money when she rode a mini-bus. Curiously, once Ingan discovered that her story did not check out, the petitioner no longer reported for work.

¹⁰ Rollo, pp. 85-86.

¹¹ Id. at 88.

¹² *People v. Bustinera*, G.R. No. 148233, June 8, 2004, 431 SCRA 284, 296.

The foregoing circumstances, coupled with the fact that the petitioner took the money paid by LACS and failed to remit the same to PCS, clearly evince intent to gain on the part of the petitioner.

As regards the sixth element, the petitioner claims that the prosecution failed to show that there was grave abuse of confidence on her part. She pointed out that there was no evidence that it was indeed her duty, as an employee of PCS, to personally collect the payments from the customers of PCS. The petitioner asserts that the failure of the prosecution to show evidence that it was indeed part of her duty, as sales clerk/agent of PCS to personally collect payments from PCS's customers negates the element of grave abuse of confidence.

The Court does not agree. The petitioner's claim is belied by the allegations in the appellant's brief¹³ she filed with the CA. Thus:

Delia Ringor (DELIA for brevity), is a 43-year old sales lady and a resident of Barangay Duyayat, Sinait, Ilocos Sur. She denied the allegation imputed against her and maintained that since 1989, she had been working as a sales lady of Peoples Consumer Store. As such, she would go out to collect orders from customers in different towns of Ilocos. She would list the orders and give the same to Alma Agbayani, who in turn, submits it to Annelyn for approval. **Delia would then deliver the goods to the customers and collect the payments thereon on her next delivery.**¹⁴ (Emphasis ours)

Grave abuse of confidence, as an element of the felony of qualified theft, must be the result of the relation by reason of dependence, guardianship, or vigilance, between the appellant and the offended party that might create a high degree of confidence between them which the appellant abused.¹⁵ The element of grave abuse of confidence is present in this case. Verily, the petitioner, as sales clerk/agent of PCS, is duty-bound to remit to Ingan the payments which she collected from the customers of PCS. She would not have been able to take the money paid by LACS if it were not for her position in PCS. In failing to remit to Ingan the money paid by LACS, the petitioner indubitably gravely abused the confidence reposed on her by PCS.

In sum, the Court yields to the factual findings of the RTC which were affirmed by the CA, there being no compelling reason to disregard the same. In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional

¹³ *Rollo*, pp. 30-43.

¹⁴ *Id.* at 35.

¹⁵ *See People v. Tanchanco*, G.R. No. 177761, April 18, 2012, 670 SCRA 130, 144; *Astudillo v. People*, 538 Phil. 786, 811-812 (2006).

circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.¹⁶

Under Article 310 of the RPC, the penalty for qualified theft is two degrees higher than that specified in Article 309. Article 309 of the RPC, in part, provides that:

Article 309. *Penalties*.—Any person guilty of theft shall be punished by:

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.

x x x x (Emphasis ours)

Thus, the penalty for qualified theft is *reclusion temporal* in its medium and maximum periods. Considering, however, that the petitioner stole ₱66,860.90 from PCS, the imposable penalty on the petitioner should be the maximum period of *reclusion temporal* medium and maximum and an incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00, but the same shall not exceed 20 years.

Applying the Indeterminate Sentence Law, the minimum term shall be *prision mayor* in its maximum period to *reclusion temporal* in its minimum period or within the range of ten (10) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term of the penalty to be imposed on the petitioner is twenty (20) years.¹⁷ Accordingly, the CA correctly imposed on the petitioner the indeterminate penalty of ten (10) years and one (1) day of *prision mayor* as minimum to twenty (20) years of *reclusion temporal* as maximum.

¹⁶ *Seguritan v. People*, G.R. No. 172896, April 19, 2010, 618 SCRA 406.

¹⁷ Considering that the amount stolen by the petitioner exceeded ₱22,000.00, the penalty to be imposed on her should be taken from the maximum period of the penalty of *reclusion temporal* medium and maximum, *i.e.*, eighteen (18) years, two (2) months and twenty-one (21) days to (20) twenty years, plus an additional four (4) years as incremental penalty for the excess ₱40,000.00 in excess of the ₱22,000.00 threshold amount under Article 309 of the RPC. However, considering that the penalty to be imposed on the petitioner, together with the incremental penalty, would already exceed twenty (20) years, the maximum term of the indeterminate penalty to be imposed on the petitioner should be set to twenty (20) years.

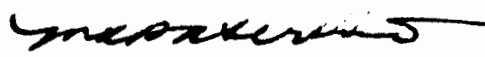
WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The Decision dated August 12, 2011 and the Resolution dated October 5, 2011 of the Court of Appeals in CA-G.R. CR No. 32945 are hereby **AFFIRMED**.

SO ORDERED.




BIENVENIDO L. REYES
Associate Justice

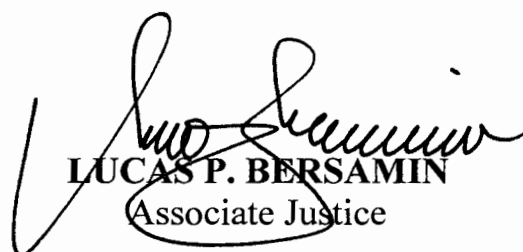
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice