



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 200308

Present:

- versus -

CARPIO, *Chairperson,*
VELASCO, JR.,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

NERA "JOY" ELEUTERIO NIELLES,
@ MERA NIELLES DELOS REYES,
Accused-Appellant.

Promulgated:

23 FEB 2015 *W. Cabalag Perfecto*

X -----

RESOLUTION

DEL CASTILLO, J.:

Appellant Mera Joy Eleuterio Nielles @ Mera Nielles Delos Reyes was charged with the crime of Qualified Theft in an Information that reads as follows:

That on or about and sometime in July, 2004 in the City of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, being then the cashier of complainant Juanita J. Flores and as such enjoying the trust and confidence reposed upon her by the said complainant, with intent to gain and without the knowledge and consent of the owner thereof, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal, and carry away collected money in the total amount of ₱640,353.86 to the damage and prejudice of the complainant, in the aforementioned amount of ₱640,353.86.

CONTRARY TO LAW.¹

In an Order² dated January 18, 2005, the Regional Trial Court (RTC) of Makati City, Branch 132, ordered appellant's release from confinement after having posted a bond in the amount ₱100,000.00 undertaken by Far Eastern *Man*

* Per Special Order No. 1910 dated January 12, 2015.

¹ Records, p. 1.

² Id. at 50; penned by Pairing Judge Ricardo R. Rosario.

Surety & Insurance Company, Inc. under Bond No. 8385. Appellant was thereafter arraigned where she pleaded not guilty to the charges.³ Trial on the merits ensued.

The prosecution established that private complainant Juanita Flores (Flores) was engaged in the business of guaranteeing purchase orders and gift checks of Shoemart and Landmark and disposing, selling or transferring them for consideration. Appellant initially worked as Flores' househelp but was eventually hired to work at Flores' office performing clerical jobs like sorting invoices. When Flores' business grew, appellant was assigned to bill and collect from sub-guarantors, and to encash and deposit checks. On July 15, 2004, appellant collected ₱640,353.86 from the sub-guarantors. However, appellant did not remit the amount to Flores or deposit it in her (Flores') account. Instead, she issued 15 personal checks totaling ₱640,353.86 and deposited them to Flores' account. All the checks were dishonored upon presentment due to "account closed." Appellant thereafter absconded.

For her part, appellant denied having stolen the amount of ₱640,353.86.

Ruling of the Regional Trial Court (RTC)

In a Judgment⁴ dated March 26, 2008, the RTC of Makati City, Branch 132, found appellant guilty of the crime of qualified theft, thus:

Given the foregoing, accused Nielles took ₱640,353.86 belonging to private complainant Juanita J. Flores, without the latter's consent. The taking was done with intent to gain because when the accused's checks bounced, she failed to remit or return the amount. The accused's act was accomplished without the use of violence against or intimidation of persons or force upon things, but rather by the use of abuse of confidence reposed [by] private complainant [upon] her. Thus, the elements of theft, as well as the circumstances that made the same as qualified theft, are present in the instant case.

Accused Nielles, on the other hand, denied having stolen and carried away ₱640,353.86. Aside from her bare denial, she did not present any evidence to support this claim. In fact, she did not deny that the checks were issued and deposited by her. Furthermore, she did not provide any reason or motive why Juanita would file the present case against her. Accordingly, her denial has no basis and deserves no consideration.⁵

The dispositive portion of the RTC Judgment reads:

³ Id. at 54.

⁴ Id. at 201-206; penned by Judge Rommel O. Baybay.

⁵ Id. at 205.

WHEREFORE, the Court finds the accused, Mera “Joy” Eleuterio Nielles a.k.a. Mera Nielles Delos Reyes, GUILTY beyond reasonable doubt of the crime of Qualified Theft and hereby sentences her to suffer the penalty of imprisonment of four (4) years of *prision correccional*, as minimum to twenty (20) years of *reclusion temporal*, as maximum. She is ordered to pay private complainant Juanita J. Flores ₱640,353.86 as actual damages.

SO ORDERED.⁶

Aggrieved, appellant filed a notice of appeal. At the same time, she submitted a Renewal Certificate⁷ of her bond effective for the period January 18, 2008 to January 18, 2009.

Ruling of the Court of Appeals (CA)

In her Brief, appellant asserted that since private complainant Flores was abroad on July 15, 2004, she could not have personally known whether appellant indeed collected amounts from the sub-guarantors. She posited that mere issuance of the 15 checks is not proof that she received/collected payments from the sub-guarantors or that she failed to remit the monies belonging to Flores. She insisted that the prosecution failed to establish that she indeed collected monies from the sub-guarantors amounting to ₱640,353.86. Appellant also theorized that she might have issued the checks in favor of the sub-guarantors for whatever transactions they have between them; and that thereafter, when she went to these sub-guarantors to collect their dues for private complainant, these sub-guarantors used the same checks she previously issued as their payment for private complainant. For that reason her personal checks were deposited in private complainant’s account.

The CA, however, in its Decision⁸ dated May 26, 2011, was not impressed by appellant’s protestations. It held that the fact that Flores was out of the country during the commission of the offense is irrelevant since the prosecution has satisfactorily established that upon her arrival in the Philippines, she immediately investigated the matter and talked to the sub-guarantors. Flores also confirmed that indeed appellant issued 15 personal checks in lieu of the amounts collected and deposited the same to Flores’ account but were all dishonored upon presentment. Significantly, the CA noted that aside from her bare denial, appellant did not present any evidence to support her claim that she did not steal the amount of ₱640,353.86 from Flores. In fine, the CA found all the elements for the crime of qualified theft to be present.

⁶ Id. at 206.

⁷ Id. at 211.

⁸ CA *rollo*, pp. 89-97; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr.

Thus, the CA affirmed with modification the ruling of the trial court, *viz*:

WHEREFORE, premises considered, the instant Appeal is hereby DENIED. Accordingly, the assailed 26 March 2008 Decision of the Regional Trial Court of Makati City, Branch 132 in Criminal Case No. 04-3643 is AFFIRMED with MODIFICATION. Accused-appellant is hereby sentenced to suffer the penalty of *reclusion perpetua*. She is further ordered to pay Private Complainant the amount of ₱640,353.86.

SO ORDERED.⁹

Hence, this appeal. In a Resolution¹⁰ dated April 18, 2012, we required both parties to file their Supplemental Briefs. The Office of the Solicitor General manifested that it is no longer filing its supplemental brief. On the other hand, appellant maintains in her Supplemental Brief¹¹ that the prosecution failed to establish that she unlawfully took the amount of ₱640,353.86 belonging to Flores. She claims that mere issuance of the checks does not prove unlawful taking of the unaccounted amount. She insists that, at most, the issuance of the checks proves that the same was issued for consideration. On February 5, 2013, appellant furnished this Court her bond renewal certificate¹² issued by Far Eastern Surety & Insurance Co., Inc. effective for the period January 18, 2013 to January 18, 2014.

Our Ruling

We concur with the findings of the trial court and the Court of Appeals that the prosecution satisfactorily established all the elements of qualified theft, to wit: 1) taking of personal property; 2) that said property belongs to another; 3) that the said taking was done with intent to gain; 4) that it was done without the owner's consent; 5) that it was accomplished without the use of violence or intimidation against persons, or of force upon things; and 6) that it was done with grave abuse of confidence.¹³ As correctly found by the appellate court:

Private complainant testified that Accused-appellant took the amount of ₱640,353.86 from her without her consent by failing to turn over the amount she collected from the former's sub-guarantors. Instead, she issued fifteen (15) personal checks and deposited the same to Private Complainant's account which however, all bounced for the reason "account closed". The taking of the amount collected by Accused-appellant was obviously done with intent to gain as she failed to remit the same to Private Complainant. Intent to gain is presumed from the act of unlawful taking. Further, the unlawful act was accomplished by Accused-appellant without the use of violence or intimidation against persons, [or] of force upon things as the payment to her of the said amount was

⁹ Id. at 97.

¹⁰ *Rollo*, pp. 19-20.

¹¹ Id. at 35-40.

¹² Id. at 53.

¹³ See *People v. Mirto*, G.R. No. 193479, October 19, 2011, 659 SCRA 796, 807.

voluntarily handed to her by the sub-guarantors as she was known to be entrusted with the collection of payments.

The circumstance of grave abuse of confidence that made the same as qualified theft was also proven. Accused-appellant herself testified that as a cashier, her functions and responsibilities include billings and collections from their agents and making of deposits and withdrawals in behalf of Private Complainant. Moreover, when the payment for the purchase orders or gift checks becomes due, she would fill up the four (4) blank checks given by the sub-guarantor with the knowledge and consent of Private Complainant. It is beyond doubt that an employee like a cashier who comes into possession of the monies she collected enjoys the confidence reposed in her by her employer, as in the instant case.¹⁴

We are one with the trial court and the appellate court in finding that the element of taking of personal property was satisfactorily established by the prosecution. During her cross-examination, private complainant Flores testified that upon having been apprised of the unremitted collections, she conducted an investigation and inquired from her sub-guarantors who admitted making payments to appellant.¹⁵ She also testified during cross-examination that when appellant arrived from Hongkong, the latter went to Flores' office and admitted to having converted the collections to her personal use.¹⁶ Interestingly, when it was her turn to testify, appellant did not rebut Flores' testimony. During her direct examination, appellant only testified thus:

Atty. Regino – Question:

Madam Witness, you are being charged here with taking, stealing and carrying away collected money in the total amount of ₱640,353.86, that is owned by Juanita J. Flores. What can you say about this allegation?

Witness:

That is not true, sir.

Atty. Regino – Question:

What is your basis in stating that?

Witness:

I never took that six hundred forty thousand that they are saying and, I never signed any document with the sub-guarantors that I [took] money from them.¹⁷

Notably, when Flores testified during her cross-examination that she talked to the sub-guarantors who admitted having made payments to appellant, the latter's counsel no longer made further clarifications or follow-up questions. Thus, Flores' testimony on this fact remains on record unrebutted. Clearly, it is

¹⁴ CA *rollo*, pp. 93-94.

¹⁵ TSN, May 25, 2005, p. 18.

¹⁶ Id. at 17.

¹⁷ TSN, July 19, 2006, pp. 16-17.

futile on the part of the appellant to belatedly claim in her Brief before the appellate court that the prosecution should have presented these sub-guarantors so they could be cross-examined.¹⁸ There is likewise no merit in her contention that the prosecution is guilty of suppression of evidence when they did not present these sub-guarantors¹⁹ simply because the defense, on its own initiative, could very well compel, thru the compulsory processes of the court, the attendance of these sub-guarantors as witnesses.²⁰ Moreover, we note that appellant did not even attempt to discredit the testimony of Flores to the effect that upon her arrival from Hongkong, appellant went to Flores' office and admitted to having committed the offense.

Significantly, when appellant was placed on the witness stand, she did not even make any attempt to explain her issuance of the 15 checks. In fact, during her entire testimony, she never made any mention about the personal checks that she issued and deposited in Flores' account. It was only in her Memorandum²¹ filed with the trial court and her Brief²² submitted to the appellate court that the same was discussed. However, her explanation as to its issuance is so convoluted that it defies belief. All that appellant could claim is that the issuance of the checks only proves that the same was for a consideration – but omitted to explain what the consideration was. She also theorized that she might have issued the checks to the sub-guarantors for her personal transactions but likewise failed to elaborate on what these transactions were. In any event, if indeed appellant did not steal the amount of ₱640,353.86 belonging to Flores, how come she issued 15 personal checks in favor of the latter and deposited the same in her account, albeit they were subsequently dishonored? Besides, we note that in appellant's Counter Affidavit²³ dated August 20, 2004 subscribed before 3rd Assistant City Prosecutor Hannibal S. Santillan of Makati City, she already admitted having taken without the knowledge and consent of private complainant several purchase orders and gift checks worth thousands of pesos. She claimed though that she was only forced to do so by Edna Cruz and cohorts.

We also concur with the findings of the trial court and the CA that the prosecution established beyond reasonable doubt that the amount of ₱640,353.86 actually belonged to Flores; that appellant stole the amount with intent to gain and without Flores' consent; that the taking was accomplished without the use of violence or intimidation against persons, or of force upon things; and that it was committed with grave abuse of confidence.

¹⁸ CA *rollo*, p. 30.

¹⁹ Id.

²⁰ See RULES OF COURT, Rule 115, Section 1(g).

²¹ Records, pp. 194-200.

²² CA *rollo*, pp. 26-33.

²³ Records, pp. 5-10.

Anent the penalty imposed, Articles 309 and 310 of the Revised Penal Code state:

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

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 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

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 articles, 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 the plantation or 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.

Based on the foregoing, since the amount taken is ₱640,353.86, then the impossible penalty shall be the maximum period of *prision mayor* in its minimum and medium periods, or eight (8) years, eight (8) months and one (1) day to ten (10) years, adding one (1) year for each additional ₱10,000.00. Thus, from ₱640,353.86, we deduct ₱22,000.00, giving us a balance of ₱618,353.86 which we divide by ₱10,000.00. We now have sixty-one (61) years which we will add to the basic penalty of eight (8) years, eight (8) months and one (1) day to ten (10) years. However, as stated in Article 309, the impossible penalty for simple theft should not exceed a total of twenty (20) years. Thus, if appellant had committed only simple theft, her penalty would be twenty (20) years of *reclusion temporal*. Considering however that in qualified theft, the penalty is two degrees higher, then the appellate court properly imposed the penalty of *reclusion perpetua*.²⁴

Finally, we note that appellant has not yet been committed to prison. In view thereof and based on our foregoing discussion, appellant must be ordered arrested and committed to prison to start serving her sentence.

ACCORDINGLY, the assailed May 26, 2011 Decision of the Court of Appeals in CA-G.R. CR No. 31635 is **AFFIRMED**. The Regional Trial Court of Makati City, Branch 132 is **DIRECTED** to issue a warrant for the arrest of

²⁴ *People v. Mirto*, supra note 13 at 814-816.

appellant and to order her commitment at the Correctional Institution for Women, and to submit to this Court a Report of such commitment, all within ten (10) days from receipt of this Resolution. The Superintendent, Correctional Institution for Women is **DIRECTED** to confirm to this Court the confinement of appellant within ten (10) days therefrom.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


PRESBITERO J. VELASCO, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest 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.



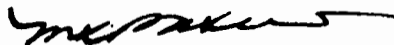
ANTONIO T. CARPIO

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

