

SECOND DIVISION

[CA-G.R. CR-H.C. No. 05974, May 21, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SHERRIE MAE BORANTES Y CAHULOGAN, ACCUSED-APPELLANT.**

DECISION

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision^[1] dated December 5, 2012 of the Regional Trial Court, National Capital Judicial Region, Branch 269, Valenzuela City, in Criminal Case No. 1109-V-11, entitled "People of the Philippines, versus Sherrie Mae Borantes y Cahulogan, Accused.", the dispositive portion of which reads:

"WHEREFORE, the Court hereby finds SHERRIE MAE BORANTES y CAHULOGAN GUILTY beyond reasonable doubt of qualified theft, as defined under Article 310, in relation to Article 309 (1), of the Revised Penal Code, and hereby imposed the penalty of reclusion perpetua.

She is further ordered to return to private complainant Aurora Raypon the P20,000.00 and US\$3,500 that she unlawfully took from her.

The accused may be credited with the period she has served under preventive imprisonment, in accordance with Article 29 of the Revised Penal Code, as amended, and applicable rules.

Costs against the accused.

SO ORDERED."

The facts are:

Accused-appellant Sherrie Mae Borantes y Cahulogan (Borantes for brevity), stands charged with the crime of Qualified Theft under Article 310 in relation to Article 309 of the Revised Penal Code in an Information^[2] the accusatory portion of which reads:

"On or about December 21, 2011, in Valenzuela City and within the jurisdiction of this Honorable Court, the accused, being then the housemaid of AURORA RAYPON y JAVIER, and as such has free access inside the owner's house, with intent to gain and without the knowledge and consent of the owner, with grave abuse of trust and confidence reposed upon her by the owner, did then and there willfully, unlawfully and feloniously take, steal and carry away with her cash money amounting to P20,000.00 and US\$3,500 which is equivalent to P152,635.00, worth the total of P172,635.00, belonging to the owner, to the latter's damage and prejudice.

Contrary to law.”

Upon arraignment, accused-appellant Borantes pleaded not guilty to the crime charged.^[3]

At the pre-trial conference, the parties stipulated on the following: 1) the identity of the accused as the same person charged in the information; and 2) the jurisdiction of the court over the case. The prosecution likewise marked the following exhibits: Exhibit "A" - Sworn Statement of Aurora Raypon; Exhibit "B" - Sworn Statement of Joan Daguasi; Exhibit "C" - Photocopy of US\$100 bill (HF17322365E); Exhibit "D" - Photocopy of US\$100 bill (HF17322378E); and Exhibit "E" - Photocopy of US\$100 bill (AB44818928U).^[4]

Trial on the merits ensued. The prosecution presented the following witnesses, namely: Aurora Raypon, Ofelia Pedolino and SPO1 Ray Bragado.

Aurora Raypon testified that: accused-appellant Borantes was her housemaid for more than a year already and she was incharge of washing their clothes and cleaning their house; her other housemaids are Ofelia Pedolino and Joan Daguasi; on December 21, 2011, she discovered that her money amounting to P20,000.00 and US\$3,500 which she kept under her bed were missing; she told her husband about it and they searched everywhere thinking that it might have flown somewhere; at that time, accused-appellant Borantes and Pedolino were in Sta. Maria, Bulacan cleaning their rest house there; when the two housemaids arrived at around 8:00 o'clock in the evening, she talked to the three (3) housemaids, told them about the missing money and asked them to tell the truth if they knew about it; then accused-appellant Borantes got her maong pants from their room (maid's room) and took the US\$200 from its pocket; she told them to help her look for the remaining money; they went to the maids' room and Ofelia Pedolino lifted the mattress; under it were lots of newspapers and Panorama magazine; she told them to look into it, and when Joan Daguasi opened the Panorama magazine, she saw the US\$100 bill; the mattress was regularly used by accused-appellant Borantes; she and her husband asked accused-appellant Borantes why and what happened (Bakit ganu'n? Anong nangyari?) and the latter confessed that she was the one who took the US\$3,500 and the P20,000.00 because she was tempted, and that she sent a portion thereof to her husband, her mother and her sister in Antique; they told her to just return the money and accused-appellant Borantes said that she will talk to her relatives; when she asked accused-appellant Borantes regarding the reply of her relatives, the latter told her that the remaining amount could not be returned because it was already used by her husband in their piggery business and the rest were loaned to the farmers; when accused-appellant Borantes did not return the remaining amount, she went to the police station to file a complaint and her statement was taken, which she identified in court and confirmed as to the truthfulness of its contents; and when asked by the court how she acquired her US\$3,500, she replied that if she has an acquaintance or seamen who came from abroad, she exchanged their dollars into peso because she has a child in the US to whom she sent dollars, while the P20,000.00 was part of their salaries.^[5]

On cross-examination, she averred that: she seldom check the money under the mattress; the last time she checked prior to the December 21, 2011 incident was in mid November 2011; she actually saw accused-appellant Borantes took the US\$200 bills from the front pocket of her maong pants; and that accused-appellant Borantes

told her "Aaminin ko na ang totoo."^[6]; when queried by the court what was admitted by accused-appellant Borantes when she said "Aaminin ko na ang totoo", she replied that the latter admitted that she was the one who took the P20,000.00 and the US\$3,500.^[7]

Ofelia Pedolino corroborated the testimony of Aurora Raypon. She testified that: she entered the employment of private complainant Raypon ahead of accused-appellant Borantes; on December 20, 2011, she and accused-appellant Borantes were in Bulacan cleaning private complainant Raypon's rest house; in the evening of that day, private complainant Raypon called them up thru her brother, and told them that there was a problem; the following day, December 21, 2011, they went back to Valenzuela City and arrived there around noon time; upon their arrival private complainant Raypon told them that there was a problem and she had to check their things; when their things were checked, accused-appellant Borantes brought out two (2) US\$100 bills from the pocket of her pants; accused-appellant Borantes said that she saw those bills under the bed of private complainant Raypon; the latter asked her if there were still other dollar bills, so they went inside their (maids) room; they looked around, and under the bed of private complainant Raypon's mother (she is also sleeping there), they saw newspapers and panorama magazine; they saw another US\$100 bill placed in between the pages of the panorama magazine and they gave it to private complainant Raypon; and thereafter, they went out of the room and private complainant Raypon talked to her husband.^[8]

On cross-examination, she stated that: she is an all around helper of private complainant Raypon and she also cleans the latter's room; they found the other US\$100 bill under the bed of "Lola"; and that they sleep in the room with "Lola" but they do not usually lie in her mattress.^[9]

SPO1 Ray Bragado testified that: on December 21, 2011, he was assigned at the Valenzuela City Police Station Investigation Unit; he was on duty from 4:00 o'clock in the afternoon to 12 midnight; that evening, private complainant Raypon arrived at their office with her husband and a certain person whom she suspected as the one who took her money; the person was later identified as accused-appellant Borantes; he conducted the initial investigation and took private complainant Raypon's statement which he identified in court; thereafter, he informed accused-appellant Borantes of her rights and prepared the necessary documents for the filing of the case; and the US\$300 bills which were used as evidence in the filing of the case were returned to private complainant Raypon.^[10]

On cross-examination he stated that he has no personal knowledge as to the circumstances of the incident except those relayed to him by private complainant Raypon.^[11]

On the other hand, the defense presented accused-appellant Borantes as its lone witness. She testified that: she started working as an all around housemaid for private complainant Raypon on April 29, 2010; on December 20, 2011, she and Ofelia Pedolino were in Sta. Maria, Bulacan to clean private complainant Raypon's resort; on December 21, 2011, private complainant Raypon called her brother, Celso, and told him to let them go back to Valenzuela City; they arrived in Valenzuela City at around 1:00 o'clock in the afternoon, and upon their arrival, private complainant Raypon and her husband talked to them and told them that they lost money; she was surprised upon hearing it; their room and things were

searched and under the bed of their employer's mother they found a US\$100 bill; the couple also searched her clothes kept in a dura box; then she gave the US\$200 bills to private complainant Raypon; said US\$200 bills were given to her two (2) weeks ago by the couple's youngest child, Angelica, for safekeeping; thereafter, their room was again searched and the couple got mad pointing to her as the one who took their money; she became afraid because it involved a large amount of money; she told the couple that it was given to her by their youngest child for safekeeping but they did not believe her; they forced her to admit that she was the one who took the money; she admitted it because she was told that "kapag inamin mo balewala na yon"; she then called up her husband in the province and told him that she was accused of stealing money; her husband told her that no matter what happens she should not sign anything; her employers got mad and brought her to the CIDG where she was investigated; she was charged of qualified theft and was brought to the detention cell; and she denied taking the money since it was not found in her possession.^[12] Thereafter, the defense rested its case.

On December 5, 2012, the lower court rendered a decision finding accused-appellant Borantes guilty of the crime charged and sentenced her to suffer the penalty of reclusion perpetua. Hence, this appeal anchored on this lone assignment of error, viz:

"THE TRIAL COURT GRAVELLY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT."

The appeal is devoid of merit.

The lower court correctly convicted accused-appellant Borantes of the crime charged. While it may be true that there was no direct evidence pointing to her as the perpetrator of the crime, accused-appellant Borantes may be convicted thru circumstantial evidence.

Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference.^[13] It is sufficient to convict the accused if it shows a series of circumstances duly proved and consistent with each other. Each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.^[14]

There were collateral facts and circumstances consistent with each other which can be inferred to prove accused-appellant Borantes' guilt.

It bears emphasis that accused-appellant Borantes was found in possession of two (2) pieces of US\$100 bills which she even voluntarily returned to private complainant Raypon when the latter confronted them about the missing money. Accused-appellant Borantes' claim that said dollar bills were given to her by private complainant Raypon's youngest daughter, Angelica, for safekeeping cannot be countenanced. If indeed said claim is true, accused-appellant Borantes could have asked Angelica to corroborate her story. As she had testified, Angelica was only upstairs in her room at the time private complainant Raypon confronted her about the missing money.^[15] Surely, Angelica's confirmation about her claim that the latter gave her the two (2) US\$100 bills could have absolved her from her predicament.

Further, another US\$100 bill was found between the pages of the Panorama magazine under the mattress where accused-appellant Borantes usually lay and she gave no sufficient explanation why it was there. Her insinuation that the other housemaids or private complainant Raypon's mother could have taken the money is baseless as there were no evidence presented linking them to such fact.

From the foregoing, it is presumed that accused-appellant Borantes was the one who took private complainant Raypon's money because it was found in her possession. Fact is, she voluntarily returned the two (2) US\$100 bills.

Under Section 3, Rule 131 of the Revised Rules on Evidence, a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act. Thus, the lower court correctly ruled that:

"The presumption is applicable in the instant case. Two one-hundred dollar bills were found in the possession of the accused. In fact, she voluntarily brought them out and gave them to private complainant, albeit claiming that she had been asked by private complainant's daughter to keep them for her. Strange in her version, though, is that she brought them out only after her employers searched through her and the other househelpers' belongings and found one \$100 bill under the bed inside the room they shared. Also quite odd is her failure to ask her employers to verify from their daughter when they did not believe her story that their daughter asked her to keep the dollars. She could have also asked them to inquire from Mrs. Raypon's mother whether the other \$100 bill found under her bed was hers. Or, the accused herself could have confronted them in the presence of her employers, so as to exculpate herself. But, these she failed to do. Her failure to credibly explain her possession of the dollar bills indeed gives rise to the presumption that she unlawfully took them from the private complainant."

Another circumstance that nailed accused-appellant Borantes to her predicament is her admission to private complainant Raypon that she was tempted to take the money and gave them to her husband, mother and sister¹⁶, thus:

"Q What happened next when you were talking?

When I was telling them the problem – the missing money, I told them kung sino man sa kanila ang may alam sabihin na lang ang totoo. And then Sherrie Mae Borantes got her maong and from its pocket, she took the \$200.

Q Where did Sherrie Mae Borantes got (sic) her maong?

A Sa lalagyan niya po ng damit.

Q Where is this lalagyan located?

A In their, room Sir.

Q By the way, where were you talking with the three housemaids?