

THIRD DIVISION

[G.R. No. 176114, April 08, 2015]

**GRACE SAN DIEGO Y TRINIDAD, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

For resolution of this Court is the Petition for Review, dated January 23, 2007, of petitioner Grace San Diego which seeks to reverse and set aside the Decision^[1] and Resolution,^[2] dated March 6, 2006 and December 14, 2006, respectively, of the Court of Appeals (CA) affirming with modification the Decision^[3] dated August 20, 2001 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 17, finding her guilty beyond reasonable doubt of the crime of qualified theft.

The following are the antecedent facts as found in the records.

Petitioner Grace San Diego had been the accountant of Obando Fisherman's Multi-Purpose Cooperative, Inc. (OFMPCI) from January 1993 to March 11, 1997. Petitioner was in charge of accounting all business transactions of the cooperative and performed the functions of cashier and teller, granted loans and did check discounting and trading. She also recorded and reported the cash in bank transactions and summarized the bank transactions for the day and was also entrusted with a set of blank checks pre-signed and was authorized to fill up the checks, particularly the date, the amount in words and in figures, and the payee.

That from November 18, 1996 to January 6, 1997, petitioner acted as cashier when Teresita Gonzales was on maternity leave and acted as teller from January 13- 30, 1997 when Flordeliza Ocampo was on her honeymoon. She then, on both occasions, had complete access to the cash vaults and filing cabinets of the cooperative where its documents were kept.

On March 12, 1997, petitioner stopped reporting for work. Narciso Correa, the General Manager of the cooperative, then instructed the bookkeeper, Angelita Dimapelis, to prepare bank book balance based on the cash transactions during the day at the office. They tried to establish the accountability of San Diego by comparing the cash position she prepared and certified as correct against the balances of the bank. Dimapelis asked the different depository banks for their bank balances since their savings account passbooks and bank statements were missing at that time.^[4]

It was only after Corres and Dimapelis reconciled the cash position with the bank balances that they discovered the discrepancies in petitioner's report. The audited figure showed the cash on hand in bank to be Php3,712,442.80 as of March 11, 1997. However, petitioner reported and certified the cash on hand of the cooperative

with the total amount of Php9,590,455.17 to be correct. Dimapelis reported the said discrepancies to Correa and the Board of Directors. It was then that they decided to file a criminal complaint against San Diego.^[5]

Thus, an Information was filed against petitioner for the crime of qualified theft,^[6] which reads as follows:

That [on] or about the period from January 1996 up to March 1997 in the [M]unicipality of Obando, [P]rovince of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being employed as accountant, cashier and teller of Obando Fisherman's Multi-Purpose Cooperative, Inc. (OFMPCI) and as such had access to the books, cash vaults and bank deposits of the Cooperative and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of Obando Fisherman's Multi-Purpose Cooperative, Inc., take, steal and carry away with her cash amounting to Php6,016,084.26, to [the] damage and prejudice of the said Obando Fisherman's Multi-Purpose Cooperative, Inc., in the said amount of Php6,016,084.26.

CONTRARY TO LAW.^[7]

Upon arraignment on December 11, 1987, the accused, then assisted by counsel *de officio* for arraignment only, entered a plea of not guilty. The pre-trial having been waived, trial on the merits ensued.

The prosecution, to prove the above-stated facts, presented the testimonies of Alfonso Piscasio, its expert witness, Narciso Correa, Angelita Demapilis, Teresita Gonzales, Noel Hilario and Santiago Panganiban. The testimonies of Dante Liwanag, Cecilia Sayo and Jessybelle San Diego were dispensed with. The defense, on the other hand, presented the testimonies of Alberto C. Gonzales and Criselda Sarmiento-Oplas. The testimony of Oplas, the defense's expert witness, can be summarized as follows:

Oplas stated that she went over the bank reconciliation statements for the whole year of 1996 and January to March 1997, the financial statements called financial conditions and the financial operations of the company for the years ending December 1996 and March 1997. She noticed that one of the recording items stated "overstatement of deposit" or overrecording of deposit so that it was deducted from the book. Another reconciling item stated "understatement deposit" and it was added. In "overstatement of deposit," she found a notation "shortage" but did not find that the amount added in the case of understatement of deposit was offset against the shortage or the amount deducted from the book in case of overstatement of deposit.^[8]

Consequently, the RTC rendered a Decision dated August 20, 2001, finding petitioner Grace San Diego guilty beyond reasonable doubt of the crime charged, thus:

WHEREFORE, based on the foregoing findings, the Court hereby finds accused GRACE SAN DIEGO y TRINIDAD guilty beyond reasonable doubt of the crime of QUALIFIED THEFT as defined and penalized under Article 310, in relation to Articles 308 and 309 of the Revised Penal Code, and accordingly, sentences her to suffer the penalty of *reclusion perpetua* for forty years without pardon before the lapse of 40 years and with the accessory penalties of death under Article 40 of the Revised Penal Code, and to indemnify the Obando Fisherman's Multi-Purpose Cooperative, Inc., in the amount of Php6,016,084.26.

SO ORDERED.^[9]

Due to the nature of the judgment, petitioner filed her appeal with this Court. However, in accordance with the ruling in *People v. Mateo*,^[10] the appeal was transmitted to the CA for intermediate review. The CA then affirmed the decision of the RTC, with modification that she indemnify the Obando Fisherman's Multi-Purpose Cooperative, Inc. in the amount of Php2,080,000.00. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the decision of the trial court appealed from which found accused-appellant **guilty** beyond reasonable doubt of the crime of **QUALIFIED THEFT** is hereby **AFFIRMED** with the **MODIFICATION** that she is to indemnify the Obando Fisherman's Multi-Purpose Cooperative, Inc. in the amount of Php 2,080,000.00.

SO ORDERED.^[11]

Petitioner, after the CA denied her motion for reconsideration, filed with this Court the present petition stating the following grounds:

- a) THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT THE PROOF ADDUCED BY THE PEOPLE SUFFICES TO OVERTURN THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE;
- b) THE COURT OF APPEALS ERRED IN THE CHARACTERIZATION OF THE OFFENSE ALLEGED TO HAVE BEEN COMMITTED, AND IN CONSEQUENCE, COMMITTED [A] GRAVE LEGAL ERROR WHEN IT HELD THAT THE PROOF ADDUCED CONGRUES WITH THE OFFENSE WITH WHICH APPELLANT WAS CHARGED; AND
- c) THE COURT OF APPEALS LIKewise COMMITTED A GRAVE ERROR OF LAW IN THE MATTER OF THE PENALTY IMPOSED.

In its comment dated April 18, 2007, the Office of the Solicitor General (OSG) stated that impleading the CA is procedurally improper. It was stressed that the petition was an offshoot of a criminal case, thus, the real party-respondent-in-interest is the People of the Philippines. The OSG prayed that the petition be dismissed outrightly.

This Court finds the present petition partially with merit.

It is settled that absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion, the factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court.^[12] Petitioner is of the opinion that the CA erred in affirming the factual findings of the RTC. She insists that the prosecution was not able to prove her guilt beyond reasonable doubt because there was no proof in the audit that the cooperative had really so much funds and that in consequence there was deficiency of some Php6,000,000 when compared to pertinent bank statements. As such, petitioner asserts that it is essential for a successful prosecution for theft that the existence of the personality stolen be established by qualitative evidence, so the prosecution must fail if no such proof of good quality was adduced.^[13]

This Court disagrees.

The CA did not err when it ruled that the proof adduced by the prosecution is sufficient to prove petitioner's guilt beyond reasonable doubt. The prosecution presented the testimony of its expert witness, Alfonso Piscasio, the cooperative's independent auditor since 1992. He stated that his audit was based on standard and generally accepted auditing procedures.^[14] The audit report, duly offered and presented in the trial, was supported by certifications by several depository banks of the cooperative indicating its balance on its account. Records are bereft of any showing that the audit report made by the independent auditor is erroneous and unsupported by documents and bank statements. Thus, there lies no reason for this Court not to afford full faith and credit to his report.

Petitioner's own expert witness, Criselda Sarmiento Oplas, failed to dispute the audit report presented. She admitted to focusing her review on bank reconciliation made by Piscasio.^[15] It was only upon cross-examination that she saw the daily cash flow that petitioner prepared and certified.^[16] She did not go over the primary books of accounts of the cooperative like the ledgers, journals and vouchers nor its commercial documents such as invoices, returned checks including account deposits. She limited herself to the monthly conciliation reports.^[17]

Petitioner also asserts that the People did not present any witness who categorically testified that petitioner ran away with the supposed missing funds. She claimed that the demonstration that some checks of varying amounts not recorded in petitioner's books notwithstanding their return or dishonor, only proved her incompetence in the performance of her assigned task and not necessarily criminal authorship.

This Court does not agree. It was held in *People v. Ragon* that resort to circumstantial evidence is inevitable when there are no eyewitnesses to a crime.^[18] Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.^[19] The courts are allowed to rule on the bases of circumstantial evidence if the following requisites concur: (1) there is more than one circumstance, (2) the facts from which the inferences are derived are proven, and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.^[20] The corollary rule is that the circumstances established must constitute an unbroken chain which leads to one fair

and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.^[21]

In the instant case, the following facts were established in the trial court, which the CA later affirmed:

- 1) Petitioner was the accountant of the cooperative. She had custody of the cooperative's checks which were pre-signed by its Manager and Chairman of the Board of Directors. She was likewise in charge of cash in bank. She had custody of the documents pertaining to the withdrawal of the cooperative's deposits with its depository banks.
- 2) Petitioner completed said checks by filling in all the details inclusive of the date, name of payee and the amount of the check in words and in figures but exclusive of the signatures.
- 3) From November 18, 1996 to January 6, 1997, she acted as cashier when Teresita Gonzales was on maternity leave and acted as teller from January 13-30, 1997 when Flordeliza Ocampo went into her honeymoon. She then, on both occasions, had complete access to the cash vaults and filing cabinets of the cooperative where its documents were kept.
- 4) Petitioner prepared a certification that the amount of Php9,653,527.06 represented the total cash balance of the cooperative its depository banks as of March 11, 1997. Upon actual verification, it was shown that the total cash balance was only Php3,637,442. 80, indicating that there was a difference of Php 6,016,084.25 and the loss of which were unexplained.
- 5) Petitioner admitted in a letter to her father that she withdrew Php200,000 from his account and Php20,000 from her sister-in-law's account in the cooperative.
- 6) Petitioner deposited Php1,050,000 and Php250,000 to her account with PCI Bank on August 13, 1996 and May 28, 1996, respectively.
- 7) Petitioner stopped reporting for work since March 12, 1997.^[22]

In view of the foregoing circumstances and based on records, such created an unbroken chain which leads to one fair and reasonable conclusion pointing to the petitioner, to the exclusion of all others, as the guilty person.

Petitioner then insists that the proof adduced plausibly indicates commission of estafa and not qualified theft. Petitioner argued that if the thing is not taken away, but received and then appropriated or converted without the consent of the owner, the crime committed is estafa.^[23]

This Court is not persuaded by her argument. One of the elements of estafa^[24] with abuse of confidence is that the money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same. When the thing is received by the offender from the offended party in trust or in commission