

## THIRD DIVISION

[ G.R. No. 205760, November 09, 2015 ]

**FRANCISCO T. INOCENCIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### RESOLUTION

**REYES, J.:**

The instant Petition for Review on *Certiorari*<sup>[1]</sup> assails the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals (CA), dated September 20, 2012 and February 13, 2013, respectively, in CA-G.R. CR No. 30621, which modified the Joint Decision<sup>[4]</sup> rendered on March 25, 2006 by the Regional Trial Court (RTC) of Mandaluyong City, Branch 214, convicting Francisco T. Inocencio (petitioner) of two counts of Theft.

#### Antecedent Facts

As summed up by the Office of the Solicitor General (OSG), the prosecution's version of the facts is as follows:

Petitioner was an employee of the then Far East Bank and Trust Company (FEBTC) from April 1978 to August 1998. Petitioner's last position therein was manager of the Automated teller Machine (ATM) Services Department Cash Management Division. As manager of said division, petitioner had control, possession, and custody of bank money amounting up to One Hundred Million Pesos. As an FEBTC employee, petitioner had an FEBTC payroll/ATM account. Through his ATM card and its Personalized Identification Number known only to him, petitioner could inquire about his balance, transfer money to and from his ATM account, and pay his bills.

Sometime in 1998, Liza Sarao (Sarao), an audit officer at FEBTC's Boni Avenue [Mandaluyong City] branch, conducted a special audit on said branch to investigate reported anomalous transactions performed by petitioner and the branch trade officer, Ma. Milagros T. Clemente (Clemente).

Sarao alleged, *inter alia*, that: (1) on February 9, 1994, Clemente fraudulently credited the amount of One Million One Hundred Fifty Thousand Six Hundred Thirty-Four Pesos and Seventy-Four Centavos (Php 1,150,634.74) to FEBTC Account No. 515-12910-8, belonging to her relative, Theresa Clemente;<sup>[5]</sup> (2) **One Million Two Hundred Sixty-Two Thousand Seven Hundred Seventy-Four Pesos and Fifty Centavos (Php 1,262,774.50) was fraudulently transferred to**

**petitioner's FEBTC Account No. 5115-12827-6** in three (3) transactions: (a) Five Hundred Sixty-Two Thousand Seven Hundred Seventy-Four Pesos and Fifty-Two Centavos (Php 562,774.52); (b) Four Hundred Thousand Pesos (Php 400,000.00); and (c) Three Hundred Thousand Pesos (Php 300,000.00); and (3) Petitioner later withdrew the whole amount, as evidenced by the deposit and withdrawal slips stored in FEBTC's Central Operations] Department.

Sarao also claimed that the funding of petitioner's FEBTC Account No. 5115-12827-6 came from unauthorized terminations of the placements of other FEBTC clients. Bank records did not show that petitioner had placements in FEBTC.

Florentino Bartolome, Jr. (Bartolome), officer-in-charge of the records unit of FEBTC under its Central Operations Department in Intramuros, Manila, received a request to retrieve documents concerning the theft cases against petitioner. Using the available microfilm, microfiche<sup>[6]</sup> and CD-ROM's in his office, Bartolome was able to retrieve certain documents, which he presented in court. Ma. Theresa Vierneza (Vierneza), Head of the Information Technology Group of FEBTC, confirmed that the documents presented and identified by Bartolome were the same documents processed by Bartolome's office.<sup>[7]</sup> (Citations omitted and emphasis in the original)

The petitioner, on the other hand, claimed that he only learned of the criminal cases filed against him while he was in the United States of America in 1998. He returned to the Philippines and inquired from Far East Bank and Trust Company's (FEBTC) investigating committee the basis of the charges against him. However, none of the committee's reports and documents was shown to him. He admitted that Ma. Milagros T. Clemente (Clemente) is his friend, but denied knowledge of the latter's fraudulent transactions. He did not dispute ownership of FEBTC Savings Account No. 5115-12827-6, but he insisted that the money in his personal account was owned by him as proceeds from the piggery business, which he established with Clemente and their other friends. He admitted having delivered pre-signed blank personal checks to Clemente but it was in pursuit of their business. Besides, at that time, he knew that his Current Account No. 5015-01498-9 had no funds, thus, Clemente cannot benefit therefrom.<sup>[8]</sup>

Five Informations<sup>[9]</sup> charging acts of theft allegedly committed in conspiracy with Clemente were filed against the petitioner before the RTC.

### **Rulings of the RTC and the CA**

On March 25, 2006, the RTC convicted the petitioner of two counts of theft as charged in the Informations in Criminal Case Nos. MC 99-1456 and MC 99-1457. The dispositive portion of the RTC decision reads:

WHEREFORE, judgment is rendered by this court finding the [petitioner] GUILTY beyond reasonable doubt of the crime of theft as follows:

In Criminal Case No. MC 99-1456, [the petitioner] is sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS and to indemnify [FEBTC] the amount of P1,262,774.50.

In Criminal Case No. MC 99-1457, [the petitioner] is sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS and to indemnify [FEBTC] the amount of P450,000.00.

[In the] [m]eantime, for failure of the prosecution to prove the guilt of the [petitioner] in Criminal Cases Nos. MC[ ]99-1458, MC[ ]99-1459 and MC[ ]99-1460, [the petitioner] is hereby ACQUITTED of the charge[s] in these cases.

SO ORDERED.<sup>[10]</sup>

The RTC found that the prosecution had proven the elements of theft as far as Criminal Case Nos. MC 99-1456 and MC 99-1457 are concerned. On January 7, 1994 and February 9, 1994, the amounts of f 450,000.00 and PI,262,774.50 were fraudulently credited by Clemente to the petitioner's savings and current accounts, then withdrawn later. Liza Sarao (Sarao) discovered the anomalies through the special audit she conducted in FEBTC's Boni Avenue branch. Florentino Bartolome, Jr. (Bartolome) retrieved the documents in support of Sarao's findings.<sup>[11]</sup>

The RTC found no credence in the petitioner's bare claim that the money in his accounts were proceeds from the piggery business. The RTC likewise considered the circumstance that the petitioner had ascribed no ill motives against any of the prosecution witnesses impelling them to testify against him. Further, the presumption provided for in Section 3(j), Rule 1.31 of the Rules of Court applies in the instant case — 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.<sup>[12]</sup>

The RTC, thus, concluded that the prosecution had proven by sufficient circumstantial evidence that the petitioner took money belonging to FEBTC.<sup>[13]</sup>

On September 20, 2012, the CA rendered the herein assailed Decision, partly granting the petitioner's appeal. The decretal portion of the CA decision is quoted below:

**WHEREFORE**, the instant appeal is **PARTIALLY GRANTED**.

The 25 March 2006 Decision of the [RTC] of Mandaluyong City, Branch 214 is hereby **MODIFIED** to read as follows: "**WHEREFORE**, judgment is rendered by this Court finding the [petitioner] **GUILTY** beyond reasonable doubt of the crime of Theft as follows:

In **Criminal Case No. MC[ ]99-1456**, [the petitioner] is sentenced to suffer the penalty of imprisonment in the **minimum period of SIX (6) YEARS to a maximum period**

**of TWENTY (20) YEARS and to indemnify [FEBTC] in [sic] the amount of P1,262,774.50.**

**In Criminal Case No. MC[ ]99-1457, [the petitioner] is hereby ACQUITTED for failure of the prosecution to prove the [petitioner's] guilt beyond reasonable doubt.**

[In the] [m]eantime, for failure of the prosecution to prove the guilt of the [petitioner] in Criminal Cases Nos. MC[ ]99-1458, MC[ ]99-1459 and MC[ ]99-1460, [the petitioner] is hereby ACQUITTED of the charge[s] in these cases.

**SO ORDERED."**

**SO ORDERED.**<sup>[14]</sup> (Emphasis in the original)

Tn rendering one, instead of two convictions, and modifying the penalty imposed by the RTC, the CA explained that:

[B]ased on the records, **[the petitioner] admitted ownership of the following bank accounts: (1) 2100-93570-4; (2) 0101-90300-6; (3) 5115-12827-6; and (4) 5015-01498-9.** These accounts, per records of the bank, **were the very accounts** where the claimed illegally-credited amounts were kept before they were ultimately withdrawn or otherwise disposed of by [the petitioner]. Especially so that [the petitioner] further admitted that the checks issued to allow the removal of the money from the bank were signed by him.

x x x x

xxx (T)he elements of theft are as follows:

- "1. That there be **taking of personal property;**
2. That said property belongs to another;
3. That the taking be done with intent to gain;
4. That the taking be done without the consent of the owner;  
and
5. That the taking be accomplished without the use of violence against or intimidation of persons or force upon things." x x x

Pertinently, a conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it.

**In Criminal Case [No.] MC 99-1456 committed on February 9, 1994, both the taking of the money and the conspiracy were**

sufficiently proved by the prosecution by way of circumstantial evidence and/or judicial admissions of [the petitioner] himself establishing: (1) that **[the petitioner] opened and owns the four subject accounts in the bank;** (2) that money belonging to the bank amounting to One Million One Hundred Fifty Thousand Six Hundred Thirty-One Pesos and Seventy-Four centavos (P1,150,631.74) was transferred by [Clemente] as proceeds from placement to the account of one Teresita Clemente; (3) that **on the same day, the amount of One Million Two Hundred Sixty-Two Thousand Seven Hundred Seventy-Four Pesos and Fifty centavos (P1,262,774.50) was transferred by [Clemente] from Teresita Clemente's account to [the petitioner's] account number 5115-12827-6;** (4) that the **same money ultimately ended up in [the petitioner's Current] [A]ccount [N]umber 5015-01498-9;** and (5) that **[the petitioner] finally disposed of the money by issuing a check for the same amount.**

While no direct evidence was established showing that (the petitioner] literally and physically took the money from the bank, We agree with the court *a quo's* finding that there was, indeed, **enough circumstantial evidence proving his guilt. Such pieces of evidence prevent Us from reversing the lower court's conviction in MC 99-1456.**

More so that **Section 4 of Rule 133** of the Rules of Court provides:

"SEC. 4. *Circumstantial evidence, when sufficient.* - Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."

The combination of all the foregoing circumstances undeniably, and beyond reasonable doubt, show that [the petitioner], **conspiring with Clemente**, TOOK money BELONGING TO THE BANK with INTENT TO GAIN but without use of violence against or intimidation of persons or force upon things.

**Pitted against the [petitioner's] defense of denial, We are convinced that there is sufficient evidence establishing his guilt of theft in MC 99-1456 beyond reasonable doubt.** Well established is the rule that denials if unsubstantiated by clear and convincing evidence are **negative, self-serving evidence which deserve no weight in law and cannot be given greater evidentiary weight over the testimony of credible witnesses who testify on affirmative matters.**

[The petitioner] further attempts to cast doubt on his conviction by claiming that there was no allegation of conspiracy in the Informations