

THIRD DIVISION

[G.R. No. 168644, February 16, 2010]

BSB GROUP, INC., REPRESENTED BY ITS PRESIDENT, MR. RICARDO BANGAYAN, PETITIONER, VS. SALLY GO A.K.A. SALLY GO-BANGAYAN, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 87600^[1] dated April 20, 2005, which reversed and set aside the September 13, 2004^[2] and November 5, 2004^[3] Orders issued by the Regional Trial Court of Manila, Branch 36^[4] in Criminal Case No. 02-202158 for qualified theft. The said orders, in turn, respectively denied the motion filed by herein respondent Sally Go for the suppression of the testimonial and documentary evidence relative to a Security Bank account, and denied reconsideration.

The basic antecedents are no longer disputed.

Petitioner, the BSB Group, Inc., is a duly organized domestic corporation presided by its herein representative, Ricardo Bangayan (Bangayan). Respondent Sally Go, alternatively referred to as Sally Sia Go and Sally Go-Bangayan, is Bangayan's wife, who was employed in the company as a cashier, and was engaged, among others, to receive and account for the payments made by the various customers of the company.

In 2002, Bangayan filed with the Manila Prosecutor's Office a complaint for *estafa* and/or qualified theft^[5] against respondent, alleging that several checks^[6] representing the aggregate amount of P1,534,135.50 issued by the company's customers in payment of their obligation were, instead of being turned over to the company's coffers, indorsed by respondent who deposited the same to her personal banking account maintained at Security Bank and Trust Company (Security Bank) in Divisoria, Manila Branch.^[7] Upon a finding that the evidence adduced was uncontroverted, the assistant city prosecutor recommended the filing of the Information for qualified theft against respondent.^[8]

Accordingly, respondent was charged before the Regional Trial Court of Manila, Branch 36, in an Information, the inculpatory portion of which reads:

That in or about or sometime during the period comprised (sic) between January 1988 [and] October 1989, inclusive, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and

feloniously with intent [to] gain and without the knowledge and consent of the owner thereof, take, steal and carry away cash money in the total amount of P1,534,135.50 belonging to BSB GROUP OF COMPANIES represented by RICARDO BANGAYAN, to the damage and prejudice of said owner in the aforesaid amount of P1,534,135.50, Philippine currency.

That in the commission of the said offense, said accused acted with grave abuse of confidence, being then employed as cashier by said complainant at the time of the commission of the said offense and as such she was entrusted with the said amount of money.

Contrary to law.^[9]

Respondent entered a negative plea when arraigned.^[10] The trial ensued. On the premise that respondent had allegedly encashed the subject checks and deposited the corresponding amounts thereof to her personal banking account, the prosecution moved for the issuance of subpoena *duces tecum /ad testificandum* against the respective managers or records custodians of Security Bank's Divisoria Branch, as well as of the Asian Savings Bank (now Metropolitan Bank & Trust Co. [Metrobank]), in Jose Abad Santos, Tondo, Manila Branch.^[11] The trial court granted the motion and issued the corresponding subpoena.^[12]

Respondent filed a motion to quash the subpoena dated November 4, 2003, addressed to Metrobank, noting to the court that in the complaint-affidavit filed with the prosecutor, there was no mention made of the said bank account, to which respondent, in addition to the Security Bank account identified as Account No. 01-14-006, allegedly deposited the proceeds of the supposed checks. Interestingly, while respondent characterized the Metrobank account as irrelevant to the case, she, in the same motion, nevertheless waived her objection to the irrelevancy of the Security Bank account mentioned in the same complaint-affidavit, inasmuch as she was admittedly willing to address the allegations with respect thereto.^[13]

Petitioner, opposing respondent's move, argued for the relevancy of the Metrobank account on the ground that the complaint-affidavit showed that there were two checks which respondent allegedly deposited in an account with the said bank.^[14] To this, respondent filed a supplemental motion to quash, invoking the absolutely confidential nature of the Metrobank account under the provisions of Republic Act (R.A.) No. 1405.^[15] The trial court did not sustain respondent; hence, it denied the motion to quash for lack of merit.^[16]

Meanwhile, the prosecution was able to present in court the testimony of Elenita Marasigan (Marasigan), the representative of Security Bank. In a nutshell, Marasigan's testimony sought to prove that between 1988 and 1989, respondent, while engaged as cashier at the BSB Group, Inc., was able to run away with the checks issued to the company by its customers, endorse the same, and credit the corresponding amounts to her personal deposit account with Security Bank. In the course of the testimony, the subject checks were presented to Marasigan for identification and marking as the same checks received by respondent, endorsed,

and then deposited in her personal account with Security Bank.^[17] But before the testimony could be completed, respondent filed a Motion to Suppress,^[18] seeking the exclusion of Marasigan's testimony and accompanying documents thus far received, bearing on the subject Security Bank account. This time respondent invokes, in addition to irrelevancy, the privilege of confidentiality under R.A. No. 1405.

The trial court, nevertheless, denied the motion in its September 13, 2004 Order.^[19] A motion for reconsideration was subsequently filed, but it was also denied in the Order dated November 5, 2004.^[20] These two orders are the subject of the instant case.

Aggrieved, and believing that the trial court gravely abused its discretion in acting the way it did, respondent elevated the matter to the Court of Appeals via a petition for *certiorari* under Rule 65. Finding merit in the petition, the Court of Appeals reversed and set aside the assailed orders of the trial court in its April 20, 2005 Decision.^[21] The decision reads:

WHEREFORE, the petition is hereby GRANTED. The assailed orders dated September 13, 2004 and November 5, 2004 are REVERSED and SET ASIDE. The testimony of the SBTC representative is ordered stricken from the records.

SO ORDERED.^[22]

With the denial of its motion for reconsideration,^[23] petitioner is now before the Court pleading the same issues as those raised before the lower courts.

In this Petition^[24] under Rule 45, petitioner averred in the main that the Court of Appeals had seriously erred in reversing the assailed orders of the trial court, and in effect striking out Marasigan's testimony dealing with respondent's deposit account with Security Bank.^[25] It asserted that apart from the fact that the said evidence had a direct relation to the subject matter of the case for qualified theft and, hence, brings the case under one of the exceptions to the coverage of confidentiality under R.A. 1405.^[26] Petitioner believed that what constituted the subject matter in litigation was to be determined by the allegations in the information and, in this respect, it alluded to the assailed November 5, 2004 Order of the trial court, which declared to be erroneous the limitation of the present inquiry merely to what was contained in the information.^[27]

For her part, respondent claimed that the money represented by the Security Bank account was neither relevant nor material to the case, because nothing in the criminal information suggested that the money therein deposited was the subject matter of the case. She invited particular attention to that portion of the criminal Information which averred that she has stolen and carried away cash money in the total amount of P1,534,135.50. She advanced the notion that the term "cash money" stated in the Information was not synonymous with the checks she was purported to have stolen from petitioner and deposited in her personal banking

account. Thus, the checks which the prosecution had Marasigan identify, as well as the testimony itself of Marasigan, should be suppressed by the trial court at least for violating respondent's right to due process.^[28] More in point, respondent opined that admitting the testimony of Marasigan, as well as the evidence pertaining to the Security Bank account, would violate the secrecy rule under R.A. No. 1405.^[29]

In its reply, petitioner asserted the sufficiency of the allegations in the criminal Information for qualified theft, as the same has sufficiently alleged the elements of the offense charged. It posits that through Marasigan's testimony, the Court would be able to establish that the checks involved, copies of which were attached to the complaint-affidavit filed with the prosecutor, had indeed been received by respondent as cashier, but were, thereafter, deposited by the latter to her personal account with Security Bank. Petitioner held that the checks represented the cash money stolen by respondent and, hence, the subject matter in this case is not only the cash amount represented by the checks supposedly stolen by respondent, but also the checks themselves.^[30]

We derive from the conflicting advocacies of the parties that the issue for resolution is whether the testimony of Marasigan and the accompanying documents are irrelevant to the case, and whether they are also violative of the absolutely confidential nature of bank deposits and, hence, excluded by operation of R.A. No. 1405. The question of admissibility of the evidence thus comes to the fore. And the Court, after deliberative estimation, finds the subject evidence to be indeed inadmissible.

Prefatorily, fundamental is the precept in all criminal prosecutions, that the constitutive acts of the offense must be established with unwavering exactitude and moral certainty because this is the critical and only requisite to a finding of guilt. ^[31] Theft is present when a person, with intent to gain but without violence against or intimidation of persons or force upon things, takes the personal property of another without the latter's consent. It is qualified when, among others, and as alleged in the instant case, it is committed with abuse of confidence.^[32] The prosecution of this offense necessarily focuses on the existence of the following elements: (a) there was taking of personal property belonging to another; (b) the taking was done with intent to gain; (c) the taking was done without the consent of the owner; (d) the taking was done without violence against or intimidation of persons or force upon things; and (e) it was done with abuse of confidence.^[33] In turn, whether these elements concur in a way that overcomes the presumption of guiltlessness, is a question that must pass the test of relevancy and competency in accordance with Section 3^[34] Rule 128 of the Rules of Court.

Thus, whether these pieces of evidence sought to be suppressed in this case $\hat{=}$ the testimony of Marasigan, as well as the checks purported to have been stolen and deposited in respondent's Security Bank account $\hat{=}$ are relevant, is to be addressed by considering whether they have such direct relation to the fact in issue as to induce belief in its existence or non-existence; or whether they relate collaterally to a fact from which, by process of logic, an inference may be made as to the existence or non-existence of the fact in issue.^[35]

The fact in issue appears to be that respondent has taken away cash in the amount

of P1,534,135.50 from the coffers of petitioner. In support of this allegation, petitioner seeks to establish the existence of the elemental act of taking by adducing evidence that respondent, at several times between 1988 and 1989, deposited some of its checks to her personal account with Security Bank. Petitioner addresses the incongruence between the allegation of theft of cash in the Information, on the one hand, and the evidence that respondent had first stolen the checks and deposited the same in her banking account, on the other hand, by impressing upon the Court that there obtains no difference between cash and check for purposes of prosecuting respondent for theft of cash. Petitioner is mistaken.

In theft, the act of unlawful taking connotes deprivation of personal property of one by another with intent to gain, and it is immaterial that the offender is able or unable to freely dispose of the property stolen because the deprivation relative to the offended party has already ensued from such act of execution.^[36] The allegation of theft of money, hence, necessitates that evidence presented must have a tendency to prove that the offender has unlawfully taken money belonging to another. Interestingly, petitioner has taken pains in attempting to draw a connection between the evidence subject of the instant review, and the allegation of theft in the Information by claiming that respondent had fraudulently deposited the checks in her own name. But this line of argument works more prejudice than favor, because it in effect, seeks to establish the commission, not of theft, but rather of some other crime — probably *estafa*.

Moreover, that there is no difference between cash and check is true in other instances. In *estafa* by conversion, for instance, whether the thing converted is cash or check, is immaterial in relation to the formal allegation in an information for that offense; a check, after all, while not regarded as legal tender, is normally accepted under commercial usage as a substitute for cash, and the credit it represents in stated monetary value is properly capable of appropriation. And it is in this respect that what the offender does with the check subsequent to the act of unlawfully taking it becomes material inasmuch as this offense is a continuing one.^[37] In other words, in pursuing a case for this offense, the prosecution may establish its cause by the presentation of the checks involved. These checks would then constitute the best evidence to establish their contents and to prove the elemental act of conversion in support of the proposition that the offender has indeed indorsed the same in his own name.^[38]

Theft, however, is not of such character. Thus, for our purposes, as the Information in this case accuses respondent of having stolen cash, proof tending to establish that respondent has actualized her criminal intent by indorsing the checks and depositing the proceeds thereof in her personal account, becomes not only irrelevant but also immaterial and, on that score, inadmissible in evidence.

We now address the issue of whether the admission of Marasigan's testimony on the particulars of respondent's account with Security Bank, as well as of the corresponding evidence of the checks allegedly deposited in said account, constitutes an unallowable inquiry under R.A. 1405.

It is conceded that while the fundamental law has not bothered with the triviality of specifically addressing privacy rights relative to banking accounts, there, nevertheless, exists in our jurisdiction a legitimate expectation of privacy governing