

## THIRD DIVISION

[ G.R. No. 173654-765, August 28, 2008 ]

**PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. TERESITA  
PUIG AND ROMEO PORRAS, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a Petition for Review under Rule 45 of the Revised Rules of Court with petitioner People of the Philippines, represented by the Office of the Solicitor General, praying for the reversal of the Orders dated 30 January 2006 and 9 June 2006 of the Regional Trial Court (RTC) of the 6<sup>th</sup> Judicial Region, Branch 68, Dumangas, Iloilo, dismissing the 112 cases of Qualified Theft filed against respondents Teresita Puig and Romeo Porras, and denying petitioner's Motion for Reconsideration, in Criminal Cases No. 05-3054 to 05-3165.

The following are the factual antecedents:

On 7 November 2005, the Iloilo Provincial Prosecutor's Office filed before Branch 68 of the RTC in Dumangas, Iloilo, 112 cases of Qualified Theft against respondents Teresita Puig (Puig) and Romeo Porras (Porras) who were the Cashier and Bookkeeper, respectively, of private complainant Rural Bank of Pototan, Inc. The cases were docketed as Criminal Cases No. 05-3054 to 05-3165.

The allegations in the Informations<sup>[1]</sup> filed before the RTC were uniform and *pro-forma*, except for the amounts, date and time of commission, to wit:

#### INFORMATION

That on or about the 1<sup>st</sup> day of August, 2002, in the Municipality of Pototan, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, above-named [respondents], conspiring, confederating, and helping one another, **with grave abuse of confidence**, being the **Cashier** and **Bookkeeper** of the Rural Bank of Pototan, Inc., Pototan, Iloilo, without the knowledge and/or consent of the management of the Bank and with intent of gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the sum of FIFTEEN THOUSAND PESOS (P15,000.00), Philippine Currency, to the damage and prejudice of the said bank in the aforesaid amount.

After perusing the Informations in these cases, the trial court did not find the existence of probable cause that would have necessitated the issuance of a warrant of arrest based on the following grounds:

(1) the element of **`taking without the consent of the**

**owners'** was missing on the ground that it is the depositors-clients, and not the Bank, which filed the complaint in these cases, who are the owners of the money allegedly taken by respondents and hence, are the real parties-in-interest; and

(2) the Informations are bereft of the phrase alleging **"dependence, guardianship or vigilance between the respondents and the offended party that would have created a high degree of confidence between them which the respondents could have abused."**

It added that allowing the 112 cases for Qualified Theft filed against the respondents to push through would be violative of the right of the respondents under Section 14(2), Article III of the 1987 Constitution which states that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him. Following Section 6, Rule 112 of the Revised Rules of Criminal Procedure, the RTC dismissed the cases on 30 January 2006 and refused to issue a warrant of arrest against Puig and Porras.

A Motion for Reconsideration<sup>[2]</sup> was filed on 17 April 2006, by the petitioner.

On 9 June 2006, an Order<sup>[3]</sup> denying petitioner's Motion for Reconsideration was issued by the RTC, finding as follows:

Accordingly, the prosecution's Motion for Reconsideration should be, as it hereby, DENIED. The Order dated January 30, 2006 STANDS in all respects.

Petitioner went directly to this Court *via* Petition for Review on *Certiorari* under Rule 45, raising the sole legal issue of:

WHETHER OR NOT THE 112 INFORMATIONS FOR QUALIFIED THEFT SUFFICIENTLY ALLEGE THE ELEMENT OF TAKING WITHOUT THE CONSENT OF THE OWNER, AND THE QUALIFYING CIRCUMSTANCE OF GRAVE ABUSE OF CONFIDENCE.

Petitioner prays that judgment be rendered annulling and setting aside the Orders dated 30 January 2006 and 9 June 2006 issued by the trial court, and that it be directed to proceed with Criminal Cases No. 05-3054 to 05-3165.

Petitioner explains that under Article 1980 of the New Civil Code, "fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loans." Corollary thereto, Article 1953 of the same Code provides that "a person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality." Thus, it posits that the depositors who place their money with the bank are considered creditors of the bank. The bank acquires ownership of the money deposited by its clients, making the money taken by respondents as belonging to the bank.

Petitioner also insists that the Informations sufficiently allege all the elements of the crime of qualified theft, citing that a perusal of the Informations will show that they specifically allege that the respondents were the Cashier and Bookkeeper of the

Rural Bank of Pototan, Inc., respectively, and that they took various amounts of money with grave abuse of confidence, and without the knowledge and consent of the bank, to the damage and prejudice of the bank.

Parenthetically, respondents raise procedural issues. They challenge the petition on the ground that a Petition for Review on *Certiorari* via Rule 45 is the wrong mode of appeal because a finding of probable cause for the issuance of a warrant of arrest presupposes evaluation of facts and circumstances, which is not proper under said Rule.

Respondents further claim that the Department of Justice (DOJ), through the Secretary of Justice, is the principal party to file a Petition for Review on *Certiorari*, considering that the incident was indorsed by the DOJ.

We find merit in the petition.

The dismissal by the RTC of the criminal cases was allegedly due to insufficiency of the Informations and, therefore, because of this defect, there is no basis for the existence of probable cause which will justify the issuance of the warrant of arrest. Petitioner assails the dismissal contending that the Informations for Qualified Theft sufficiently state facts which constitute (a) the qualifying circumstance of *grave abuse of confidence*; and (b) the element of *taking, with intent to gain and without the consent of the owner*, which is the Bank.

In determining the existence of probable cause to issue a warrant of arrest, the RTC judge found the allegations in the Information inadequate. He ruled that the Information failed to state facts constituting the qualifying circumstance of *grave abuse of confidence* and the element of *taking without the consent of the owner*, since the owner of the money is not the Bank, but the depositors therein. He also cites *People v. Koc Song*,<sup>[4]</sup> in which this Court held:

There must be allegation in the information and proof of a relation, by reason of dependence, guardianship or vigilance, between the respondents and the offended party that has created a high degree of confidence between them, which the respondents abused.

*At this point, it needs stressing that the RTC Judge based his conclusion that there was no probable cause simply on the insufficiency of the allegations in the Informations concerning the facts constitutive of the elements of the offense charged. This, therefore, makes the issue of sufficiency of the allegations in the Informations the focal point of discussion.*

Qualified Theft, as defined and punished under Article 310 of the Revised Penal Code, is committed as follows, viz:

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 article, 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 a plantation, 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.  
(Emphasis supplied.)

Theft, as defined in Article 308 of the Revised Penal Code, requires the physical taking of another's property without violence or intimidation against persons or force upon things. The elements of the crime under this Article are:

1. Intent to gain;
2. Unlawful taking;
3. Personal property belonging to another;
4. Absence of violence or intimidation against persons or force upon things.

To fall under the crime of Qualified Theft, the following elements must concur:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;
6. *That it be done with grave abuse of confidence.*

On the sufficiency of the Information, Section 6, Rule 110 of the Rules of Court requires, *inter alia*, that the information must state the acts or omissions complained of as constitutive of the offense.

On the manner of how the Information should be worded, Section 9, Rule 110 of the Rules of Court, is enlightening:

Section 9. *Cause of the accusation.* The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is evident that the Information need not use the exact language of the statute in alleging the acts or omissions complained of as constituting the offense. The test is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly.<sup>[5]</sup>

The portion of the Information relevant to this discussion reads: