

## FIRST DIVISION

**[ G.R. No. 143676, February 19, 2003 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELY MERCADO, ACCUSED-APPELLANT.**

### DECISION

**AZCUNA, J.:**

Appellant Fely Mercado comes before this Court to appeal the decision, dated March 20, 2000, of the Regional Trial Court of Bacolod City in Criminal Case No. 17693,<sup>[1]</sup> finding her guilty beyond reasonable doubt of the crime of Qualified Theft.

The information charging appellant reads as follows:

The undersigned Assistant City Prosecutor hereby accuses FELY MERCADO of the crime of QUALIFIED THEFT (Art. 310 of the Revised Penal Code), committed as follows:

That sometime in the month of November, 1995, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused being then employed as manager of the herein offended party, Dobros Agencia de Empeños, Inc. and Dobros Jewelry Store, Bacolod City, herein represented by its treasurer and director, Lilibeth Anglo, with grave abuse of confidence, and obvious ungratefulness by reason of the trust and confidence reposed upon her as such manager of the herein offended party, with intent to gain and without knowledge and consent of the owner thereof, did then and there, wil[ly]fully, unlawfully and feloniously take, steal and carry away with h[er] various pieces of jewelry items including the pawned items inside the vault with a total value of NINE MILLION SEVEN HUNDRED NINETY TWO THOUSAND FOUR HUNDRED FIFTY (P9,792[, ]450.00) PESOS, Philippine Currency, all belonging to the herein offended party, thus causing damage and prejudice to the latter in the aforementioned amount.<sup>[2]</sup>

Appellant pleaded not guilty.<sup>[3]</sup> After trial, she was found guilty in the aforementioned decision of the trial court that has the following dispositive portion:

FOR ALL THE FOREGOING, the court finds the accused Fely Mercado GUILTY beyond reasonable doubt of Qualified Theft as Principal by Direct Participation as charged in the Information. She is hereby sentenced to suffer the penalty of [r]eclusion perpetua but with all the accessories of the penalty imposed under Article 40 of the Revised Penal Code. She is also condemned to pay the offended party, DOBROS AGENCIA DE EMPEÑOS the sum of P9,792,450.00 as indemnification for the value of the stolen jewelr[y] and the sum of P50,000.00 as attorney's fees.

## THE FACTS

The prosecution's account of the facts is as follows:<sup>[4]</sup>

Accused-appellant Fely Mercado was the manager of the Dobros Agencia de Empeños and Dobros Jewelry Store at Libertad Street, Bacolod City. The store was one of the jewelry stores operated by the V.Y. Domingo chain of jewelry stores. She had been with the company since 1996, where she rose from the ranks after starting as a pawnshop clerk, appraiser and finally, manager of the store.

As manager, accused-appellant was in-charge of the safety vault of the store and only she was allowed to go inside thereof to get pieces of jewelry. Only accused-appellant and Connie Domingo, a corporate director of the V.Y. Domingo chains of Jewelry Store, knew the lock combination of the outer door vault and were holders of the key of the vault's inner door. Her duties and responsibilities as manager of the store and as the accountable officer with respect to the jewelry stored therein had been properly relayed to the accused-appellant as shown by an "acknowledgement of accountabilities and responsibilities" wherein accused appellant agreed to answer for all the losses that may be incurred on account of her accountabilities.

On 20 November 1995, an inventory of the store's jewelry in the vault was conducted by the auditors of the company, namely: Jocelyn Alcantara and Pilar Vicente. The inventory was conducted six months after the last inventory of the store in May 1995. During the 20 November 1995 inventory, it was found that 345 pieces of jewelry kept in the vault were missing, valued at P9,792,450.00. Confronted by this loss, accused-appellant, who was then present during the audit and inventory, readily acknowledged the losses and undertook to pay them.

Appellant presents her own version of the facts:<sup>[5]</sup>

x   x   x

x   x   x

The accused-appellant Fely Mercado was first assigned as a bookkeeper, and then assistant appraiser and later on as vault-in-charge of Dobros Agencia de Empeños. The highest position she was holding prior to her separation as an employee was that of manager/appraiser. As such employee, there are other people involved in the management of the said jewelry store such as Mark Quiamco who was the vault keeper in charge of taking out the [pieces of] jewelr[y] from the vault and also the pledged [pieces of] jewelr[y] and he was the one in charge in keeping back the [pieces of] jewelr[y] (p. 19, TSN, October 21, 1997). Clara Lorca was the assistant vault keeper if Mark Quiamco is not around (p. 20, TSN, ibid.) and she also attends to the jewelry store (p. 21, TSN, ibid.) while Jeneth Cuevas was assigned as clerk. All in all, there were four (4) people assigned in the said store (p. 17, TSN, ibid.)

Dobros Agencia de Empeños has a vault inside the store where pieces of jewelry were being kept. There are actually two (2) doors before you can

get to the vault (p. 22, TSN, *ibid.*) The vault [i]s made of steel body in front; the second door is made of steel bars. These two doors were provided with respective locks. The inner door is provided with padlock which can be opened only with a key (p. 24, TSN, *ibid.*) and the outer door ha[s] a combination lock (p. 25, TSN, *ibid.*), which combination number thereof is known to the accused-appellant and Connie Domingo and if the vault keeper is absent and it is necessary to open the vault it is Connie Domingo that [sic] will open the vault (p. 33-34, TSN, February 28, 1997).

[I]n the month of November an inventory was made wherein the accused-appellant was not present (p. 36, TSN, October 21, 1997) since she was transferred to FS Domingo Pawnshop located in front of Gaisano Department Store on November 24 while the inventory was being made (p. 43, TSN, *ibid.*). Neither did they inform her what the reason was why she was transferred (p. 43, TSN, *ibid.*) The inventory usually takes seven days to complete and that the specific date when the inventory was made was on November 21 (p.45, TSN, *ibid.*). In essence, the inventory was still being conducted when she was transferred to FS Domingo Pawnshop (p. 47, TSN, *ibid.*) and she does not know when they finished the inventory (p. 47, TSN, *ibid.*). During an inventory, accused-appellant is required to present some documents before they actually start the inventory. Some of these documents were the Inter Transfer Receipts, Cash lay-away slip and consignment slip (p. 50, TSN, *ibid.*). Whenever a piece of jewelry is sold, a cash lay-away slip is prepared by the store to show that [the] particular jewelry was sold (p. 60, TSN, *ibid.*). These cash lay-away slips [are] separately kept in a Tupperware and [kept] inside the vault (p. 61, TSN, *ibid.*). Since the store can sell an average of 50 jewelry a month, it would amount to 350 items sold covering the period of May to November. These sales of 350 items were all covered by cash lay-away slips (p.63, TSN, *ibid.*), which the accused-appellant in fact presented to the auditors when the inventory was made (p. 64, TSN, *ibid.*).

## THE ISSUES

Appellant seeks a reversal of her conviction and assigns the following as errors:<sup>[6]</sup>

### I

THE COURT A *QUO* GROSSLY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED THEFT FOR THE FOLLOWING REASONS:

- A. NO PLAUSIBLE EVIDENCE RELATING TO THE VALUE OF THE ALLEGED MISSING JEWELRY HAS BEEN CONCLUSIVELY ESTABLISHED BY THE PROSECUTION;
- B. THE WITNESSES FOR THE PROSECUTION WERE NOT UNQUESTIONABLY CREDIBLE;

C. THERE WAS NO SINGLE EVIDENCE, DIRECT OR CIRCUMSTANTIAL, LEADING TO THE CONCLUSION THAT THE ACCUSED TOOK THE JEWELRY SUBJECT MATTER OF THE CRIME CHARGED.

## II

THE COURT A *QUO* GRAVELY ERRED IN RENDERING JUDGMENT UPON CONJECTURES/SURMISES.

## III

THE COURT A *QUO* GROSSLY ERRED IN THE IMPOSITION OF THE PENALTY OF *RECLUSION PERPETUA* WHEN THE PENALTY IMPOSABLE FOR QUALIFIED THEFT SHOULD ONLY BE *RECLUSION TEMPORAL* THUS ENTITLING THE ACCUSED TO THE BENEFIT OF THE INDETERMINATE SENTENCE LAW.

### THE COURT'S RULING

#### On the First Assignment of Error: Evidence on Value and Credibility of Witnesses

The argument that no plausible evidence relating to value of the missing jewelry was presented by the prosecution has no merit. To begin with, the prosecution presented the testimony of Jocelyn Alcantara, Chief Auditor of V.Y. Domingo Diamond and Gems, Inc. ("V.Y. Domingo").<sup>[7]</sup> Dobros Agencia de Empeños, Inc. and Dobros Jewelry Store (collectively "Dobros"),<sup>[8]</sup> where appellant worked as manager/appraiser, is a branch store of V.Y. Domingo.<sup>[9]</sup> Ms. Alcantara testified that she conducted a physical inventory<sup>[10]</sup> of the items contained inside the vault of Dobros on November 20, 1995<sup>[11]</sup> and it was discovered that a considerable number of jewelry were missing, amounting in value to P9,792,450.00.<sup>[12]</sup>

A list of the missing jewelry and their corresponding values, which amounted to P9,792,450.00, was made in an audit report prepared by Ms. Alcantara and her auditing staff. The audit report was presented as evidence by the prosecution.<sup>[13]</sup>

Witnesses Jermin Cruz and Lilibeth Anglo also testified on the amount that was missing.

Jermin Cruz testified that she is the General Manager of Dobros.<sup>[14]</sup> Ms. Cruz recounted how she was present during the inventory and that an audit report was prepared which tallied the missing items to be P9,792,450.00 in value.<sup>[15]</sup>

Lilibeth Anglo testified that she is a member of the Board of Directors and Treasurer of Dobros,<sup>[16]</sup> and that she was present during the audit and was given an audit report stating that the missing items amounted in value to P9,792,450.00.<sup>[17]</sup>

Clearly, the value of the missing jewelry has been firmly established by the prosecution.

Also unmeritorious is appellant's claim that the witnesses were not unquestionably

credible. Suffice it to say that the trial court's findings on the credibility of witnesses are entitled to great respect and will not be disturbed on appeal, absent any showing of palpable mistake or grave abuse of discretion.<sup>[18]</sup> The reason for this is that the trial court has the direct opportunity to observe the witnesses on the stand and to determine whether or not they are telling the truth.<sup>[19]</sup> In this case, there is no showing that the trial court committed such palpable mistake or grave abuse of discretion.

Appellant impugns the witnesses' credibility solely on the basis that they were still in the employ of the private complainant at the time their testimonies were given.<sup>[20]</sup> This is not sufficient basis to disregard their testimonies. Time and again, we have ruled that the testimony of a witness is not discredited by the mere fact that he is an employee of the complainant.<sup>[21]</sup>

The third argument of the accused is related to the second assignment of error. Hence, we shall address them together.

### On the Second Assignment of Error: The Alleged

#### Conjectures/Surmises and the Circumstantial Evidence

Appellant claims that the trial court gravely erred in rendering judgment upon conjectures and surmises. We have arduously gone over the records of the case and found the contrary.

Appellant herself admitted taking the missing jewelry. On record are the testimonies of three witnesses<sup>[22]</sup> who said that appellant readily admitted to them that she took the missing items and promised to pay for the same.<sup>[23]</sup> As previously held, the declaration of the accused expressly acknowledging his guilt to the offense may be given in evidence against him, and any person otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard, if he understood it.<sup>[24]</sup>

In addition, the prosecution submitted two documents, executed by appellant herself, wherein she expressly admitted taking the missing jewelry.<sup>[25]</sup> In one of the documents, appellant explained that she had the items pawned. In the other document, appellant transferred to Dobros some of her personal properties as partial payment for the missing jewelry that she took. When appellant was shown these two documents on cross-examination, she identified the signatures appearing thereon as hers.<sup>[26]</sup> After she herself thus established the due execution and authenticity of the documents, these written admissions are admissible against her.<sup>[27]</sup>

But even without the extrajudicial admissions of appellant, there is enough circumstantial evidence to uphold her conviction.

Circumstantial evidence sufficient for conviction requires that: (a) There is more than one circumstance; (b) the facts from which the inferences have been derived are proven; and (c) the combination of all the circumstances is such that it produces a conviction beyond reasonable doubt.<sup>[28]</sup>