

THIRD DIVISION

[G.R. No. 162540, July 13, 2009]

**GEMMA T. JACINTO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on *certiorari* filed by petitioner Gemma T. Jacinto seeking the reversal of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 23761 dated December 16, 2003, affirming petitioner's conviction of the crime of Qualified Theft, and its Resolution^[2] dated March 5, 2004 denying petitioner's motion for reconsideration.

Petitioner, along with two other women, namely, Anita Busog de Valencia y Rivera and Jacqueline Capitle, was charged before the Regional Trial Court (RTC) of Caloocan City, Branch 131, with the crime of Qualified Theft, allegedly committed as follows:

That on or about and sometime in the month of July 1997, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, being then all employees of MEGA FOAM INTERNATIONAL INC., herein represented by JOSEPH DYHENGCO Y CO, and as such had free access inside the aforesaid establishment, with grave abuse of trust and confidence reposed upon them with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and deposited in their own account, Banco De Oro Check No. 0132649 dated July 14, 1997 in the sum of P10,000.00, representing payment made by customer Baby Aquino to the Mega Foam Int'l. Inc. to the damage and prejudice of the latter in the aforesaid stated amount of P10,000.00.

CONTRARY TO LAW.^[3]

The prosecution's evidence, which both the RTC and the CA found to be more credible, reveals the events that transpired to be as follows.

In the month of June 1997, Isabelita Aquino Milabo, also known as Baby Aquino, handed petitioner Banco De Oro (BDO) Check Number 0132649 postdated July 14, 1997 in the amount of P10,000.00. The check was payment for Baby Aquino's purchases from Mega Foam Int'l., Inc., and petitioner was then the collector of Mega Foam. Somehow, the check was deposited in the Land Bank account of Generoso

Capitle, the husband of Jacqueline Capitle; the latter is the sister of petitioner and the former pricing, merchandising and inventory clerk of Mega Foam.

Meanwhile, Rowena Ricablanca, another employee of Mega Foam, received a phone call sometime in the middle of July from one of their customers, Jennifer Sanalila. The customer wanted to know if she could issue checks payable to the account of Mega Foam, instead of issuing the checks payable to *CASH*. Said customer had apparently been instructed by Jacqueline Capitle to make check payments to Mega Foam payable to *CASH*. Around that time, Ricablanca also received a phone call from an employee of Land Bank, Valenzuela Branch, who was looking for Generoso Capitle. The reason for the call was to inform Capitle that the subject BDO check deposited in his account had been dishonored.

Ricablanca then phoned accused Anita Valencia, a former employee/collector of Mega Foam, asking the latter to inform Jacqueline Capitle about the phone call from Land Bank regarding the bounced check. Ricablanca explained that she had to call and relay the message through Valencia, because the Capitles did not have a phone; but they could be reached through Valencia, a neighbor and former co-employee of Jacqueline Capitle at Mega Foam.

Valencia then told Ricablanca that the check came from Baby Aquino, and instructed Ricablanca to ask Baby Aquino to replace the check with cash. Valencia also told Ricablanca of a plan to take the cash and divide it equally into four: for herself, Ricablanca, petitioner Jacinto and Jacqueline Capitle. Ricablanca, upon the advise of Mega Foam's accountant, reported the matter to the owner of Mega Foam, Joseph Dyhengco.

Thereafter, Joseph Dyhengco talked to Baby Aquino and was able to confirm that the latter indeed handed petitioner a BDO check for P10,000.00 sometime in June 1997 as payment for her purchases from Mega Foam.^[4] Baby Aquino further testified that, sometime in July 1997, petitioner also called her on the phone to tell her that the BDO check bounced.^[5] Verification from company records showed that petitioner never remitted the subject check to Mega Foam. However, Baby Aquino said that she had already paid Mega Foam P10,000.00 cash in August 1997 as replacement for the dishonored check.^[6]

Generoso Capitle, presented as a hostile witness, admitted depositing the subject BDO check in his bank account, but explained that the check came into his possession when some unknown woman arrived at his house around the first week of July 1997 to have the check rediscounted. He parted with his cash in exchange for the check without even bothering to inquire into the identity of the woman or her address. When he was informed by the bank that the check bounced, he merely disregarded it as he didn't know where to find the woman who rediscounted the check.

Meanwhile, Dyhengco filed a Complaint with the National Bureau of Investigation (NBI) and worked out an entrapment operation with its agents. Ten pieces of P1,000.00 bills provided by Dyhengco were marked and dusted with fluorescent powder by the NBI. Thereafter, the bills were given to Ricablanca, who was tasked to pretend that she was going along with Valencia's plan.

On August 15, 2007, Ricablanca and petitioner met at the latter's house. Petitioner, who was then holding the bounced BDO check, handed over said check to Ricablanca. They originally intended to proceed to Baby Aquino's place to have the check replaced with cash, but the plan did not push through. However, they agreed to meet again on August 21, 2007.

On the agreed date, Ricablanca again went to petitioner's house, where she met petitioner and Jacqueline Capitle. Petitioner, her husband, and Ricablanca went to the house of Anita Valencia; Jacqueline Capitle decided not to go with the group because she decided to go shopping. It was only petitioner, her husband, Ricablanca and Valencia who then boarded petitioner's jeep and went on to Baby Aquino's factory. Only Ricablanca alighted from the jeep and entered the premises of Baby Aquino, pretending that she was getting cash from Baby Aquino. However, the cash she actually brought out from the premises was the P10,000.00 marked money previously given to her by Dyhengco. Ricablanca divided the money and upon returning to the jeep, gave P5,000.00 each to Valencia and petitioner. Thereafter, petitioner and Valencia were arrested by NBI agents, who had been watching the whole time.

Petitioner and Valencia were brought to the NBI office where the Forensic Chemist found fluorescent powder on the palmar and dorsal aspects of both of their hands. This showed that petitioner and Valencia handled the marked money. The NBI filed a criminal case for qualified theft against the two and one Jane Doe who was later identified as Jacqueline Capitle, the wife of Generoso Capitle.

The defense, on the other hand, denied having taken the subject check and presented the following scenario.

Petitioner admitted that she was a collector for Mega Foam until she resigned on June 30, 1997, but claimed that she had stopped collecting payments from Baby Aquino for quite some time before her resignation from the company. She further testified that, on the day of the arrest, Ricablanca came to her mother's house, where she was staying at that time, and asked that she accompany her (Ricablanca) to Baby Aquino's house. Since petitioner was going for a pre-natal check-up at the Chinese General Hospital, Ricablanca decided to hitch a ride with the former and her husband in their jeep going to Baby Aquino's place in Caloocan City. She allegedly had no idea why Ricablanca asked them to wait in their jeep, which they parked outside the house of Baby Aquino, and was very surprised when Ricablanca placed the money on her lap and the NBI agents arrested them.

Anita Valencia also admitted that she was the cashier of Mega Foam until she resigned on June 30, 1997. It was never part of her job to collect payments from customers. According to her, on the morning of August 21, 1997, Ricablanca called her up on the phone, asking if she (Valencia) could accompany her (Ricablanca) to the house of Baby Aquino. Valencia claims that she agreed to do so, despite her admission during cross-examination that she did not know where Baby Aquino resided, as she had never been to said house. They then met at the house of petitioner's mother, rode the jeep of petitioner and her husband, and proceeded to Baby Aquino's place. When they arrived at said place, Ricablanca alighted, but requested them to wait for her in the jeep. After ten minutes, Ricablanca came out and, to her surprise, Ricablanca gave her money and so she even asked, "What is this?" Then, the NBI agents arrested them.

The trial of the three accused went its usual course and, on October 4, 1999, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court finds accused **Gemma Tubale De Jacinto y Latosa, Anita Busog De Valencia y Rivera and Jacqueline Capitle** **GUILTY** beyond reasonable doubt of the crime of **QUALIFIED THEFT** and each of them is hereby sentenced to suffer imprisonment of **FIVE (5) YEARS, FIVE (5) MONTHS AND ELEVEN (11) DAYS, as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS AND TWENTY (20) DAYS, as maximum.**

SO ORDERED.^[7]

The three appealed to the CA and, on December 16, 2003, a Decision was promulgated, the dispositive portion of which reads, thus:

IN VIEW OF THE FOREGOING, the decision of the trial court is **MODIFIED**, in that:

- (a) the sentence against accused Gemma Jacinto stands;
- (b) the sentence against accused Anita Valencia is reduced to 4 months *arresto mayor* medium.
- (c) The accused Jacqueline Capitle is acquitted.

SO ORDERED.

A Partial Motion for Reconsideration of the foregoing CA Decision was filed only for petitioner Gemma Tubale Jacinto, but the same was denied per Resolution dated March 5, 2004.

Hence, the present Petition for Review on *Certiorari* filed by petitioner alone, assailing the Decision and Resolution of the CA. The issues raised in the petition are as follows:

1. Whether or not petitioner can be convicted of a crime not charged in the information;
2. Whether or not a worthless check can be the object of theft; and
3. Whether or not the prosecution has proved petitioner's guilt beyond reasonable doubt.^[8]

The petition deserves considerable thought.

The prosecution tried to establish the following pieces of evidence to constitute the elements of the crime of qualified theft defined under Article 308, in relation to