

FIRST DIVISION

[G.R. NO. 165884, April 23, 2007]

**CIELITO R. GAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to set aside the Decision^[1] of the Court of Appeals dated 16 June 2004 in CA-G.R. CR No. 22073 which affirmed, except for the penalties imposed, the Joint Decision^[2] of Branch 26 of the Regional Trial Court (RTC) of Cabanatuan City, in Criminal Cases No. 224-AF (4682-R), 127-AF (4683-R), 225-AF (4684-R), 128-AF (4685-R), 153-AF (4686-R), 666-AF (4687-R), 155-AF (4688-R), 667-AF (4689-R), 668-AF (4690-R) and 226-AF (4691-R) dated 27 August 1997 finding petitioner Cielito R. Gan guilty of ten counts of Simple Theft, and its Resolution^[3] dated 20 October 2004 denying petitioner's motion for reconsideration.

The ten informations for Qualified Theft were filed on 2 May 1985. On 14 June 1987, the Provincial Courthouse was razed causing the records of the cases to be burned. By reason thereof, the records of the cases were ordered reconstituted by the trial court. On 12 August 1987, the reconstitution of the records was terminated and all the documents submitted were approved.

The accusatory portion of the information in Crim. Case No. 224-AF (4682-R) reads:

That on or about the 15th day of November, 1982, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, being employed as an internal auditor of the Wesleyan University-Philippines, with intent of gain and without the knowledge of the said institution's representative, Dr. Gloria D. Lacson, President, person-in-charge of the administrative and financial matters, with serious breach of confidence reposed on him by his employer did then and there willfully, unlawfully, and feloniously take, steal and carry away the sum of FIVE THOUSAND SIX HUNDRED THIRTY PESOS & 45/100 (P5,630.45), Philippine Currency, in the following manner to wit: said accused then assigned as the internal auditor of the aforesaid Wesleyan University-Philippines, for the purpose of auditing the task performed by the accounting department thereof, as in fact said auditor did audit the "cash turn over slip" representing the part cash collection of Elsa A. Dantes, teller, for the said business day and after counting and auditing the cash, check/s embodied therein, instead of returning the same to said teller for the final turn-over to the treasurer, said accused deliberately withheld the same without any authority to do so and pocketed the sums involved, to the damage and prejudice of the

Wesleyan University-Philippines in the aforementioned amount, Philippine Currency.^[4]

The nine other Informations are similarly worded except for the date when the theft was committed, the amount taken, and the name of the teller whose collection was taken. The pertinent data in the other informations are as follows:

| Case No. | Date | Amount | Name of Teller |
|--------------------|----------------------------|--------------------------|--------------------------------|
| 127-AF (4683-R) | 13 December 1982 | P17,895.00 P11,228.00 | Mercedita S. Manio |
| 225-AF (4684-R) | 30 May 1983 2 June 1983 | P10,500.85 P30,819.00 | Elsa A. Dantes Mercedita S. |
| 128-AF (4685-R) | 7 September 1983 | P13,678.00 P8,975.75 | Manio Mercedita S. |
| 153-AF (4686-R) | 7 November 1983 | P16,820.00 P25,668.00 | Manio Elsa A. Dantes |
| 666-AF (4687-R) | 13 February 1984 | P9,551.60 | Mercedita S. Manio |
| 155-AF (4688-R) | 4 June 1984 4 June 1984 | | Elsa A. Dantes Mercedita S. |
| 667-AF (4689-R) | 23 July 1984 | | Manio Mercedita S. |
| 668-AF (4690-R) | | | Manio |
| 226-AF (4691-R) | | | |

When arraigned on 28 October 1987, petitioner, assisted by counsel *de parte*, pleaded not guilty to the charges.^[5] No pre-trial conference was conducted because appellant and his counsel did not agree to the holding thereof.^[6] Thereafter, joint trial of the cases ensued.

The prosecution presented the following witnesses: Elsa A. Dantes, Merceditas S. Manio, Jose B. Ferrer, Emely Pajarillaga, Librada D. Lacson, Inocencia Sarmenta, and Jose C. Reyes. On the other hand, the accused took the witness stand for the defense.

Elsa A. Dantes^[7] testified that she has been working at the Wesleyan University-Philippines (WUP) since 1972 and has been holding the position of teller since June 1981. As teller, she receives payments from students or persons paying the school for which she issues receipts. The original copy of the official receipt is given to the person paying while she holds on to the duplicate and triplicate copies. She explains that she turns over her collection for the day to the Internal Auditor of WUP for auditing purposes. Together with the money, she turns over three copies of Cash Turn Over Slips (CTOS) and the duplicate and triplicate copies of the official receipts she had issued for the payments she had received. The Internal Auditor returns to her one copy of the CTOS, and the duplicate and triplicate copies of the official receipts which she will use as bases in making an abstract of receipts. She said it is the teller's duty to turn over the money to the Internal Auditor and it is the latter who will give it to the treasurer. Once she turns over the money to the Treasurer, she no longer knows what the Internal Auditor does to the money. She said she was

on duty on 15 November 1981,^[8] 30 May 1983,^[9] 7 November 1983,^[10] and 4 June 1984^[11] where she turned over to petitioner for auditing the amounts of P5,630.45, P11,228.00, P13,678.00 and P16,820, respectively, together with their corresponding CTOS and duplicate and triplicates copies of the official receipts. As proof that she prepared the CTOS, her initials^[12] appear thereon. She explained that the initials^[13] of petitioner on the CTOS which he affixed in her presence indicate that he has received the money from her. Since the CTOS^[14] did not contain the signature of the Treasurer of WUP, it means that the money was not delivered to the Treasurer. She revealed she learned about the missing funds from Joaquin Cunanan and Company, WUP's External Auditor, when the latter discovered the same. She disclosed that there was no written instruction for her to deliver and leave the money to the Internal Auditor.

Merceditas Manio^[15] took the witness stand and stated that she has been a teller at WUP since 1 July 1981. Among her duties is to receive cash payments made to the WUP whereby she issues receipts therefor. The original (first) copy of the receipts are given to the payor while the second and third copies thereof are retained by her to be given to the Internal Auditor for auditing purposes. On 13 December 1982,^[16] 2 June 1983,^[17] 7 September 1983,^[18] 13 February 1984,^[19] 4 June 1984,^[20] and 23 July 1984,^[21] she turned over her collections for the day in the amounts of P17,895.00, P10,500.85, P30,819.00, P8,975.75, P25,668.00, and P9,551.60, respectively. Each amount was turned over to the Internal Auditor for audit accompanied with the CTOS and the duplicate and triplicate of the official receipt. All the CTOS^[22] covering the foregoing amounts contained both her signature^[23] and that of petitioner which show that it was she who prepared the CTOS and that the amounts were turned over to the petitioner. She said petitioner wrote his signatures^[24] or initials on the CTOS in her presence.

Ms. Manio further narrated that she learned her duties as teller from petitioner and that from the time she started working as a teller in June 1981, she turned over her collections to petitioner. She said it was through the External Auditor, Joaquin Cunanan and Company, that she found out about the missing funds. She added that although there was no written instruction from the management of the WUP to turn over the collections to the Internal Auditor, it was the usual procedure for tellers to turn over the collections to petitioner. She stressed that the signature of petitioner in the CTOS means he audited the collection and took the money. Of the two copies of the CTOS retained by petitioner, petitioner is supposed to deliver a copy to the Treasurer who will sign the copy to be kept by petitioner.

Jose B. Ferrer^[25] testified that he has been the Accountant of WUP since June 1974. As such, his duties, among other things, are to record in the General Ledger the monthly transactions reflected in the cash disbursement book, cash receipts book, and receivables from students and employees. He said that the Internal Auditor is not the custodian of funds and the tellers are not supposed to turn over their collections to the Internal Auditor. However, there was an order from the Internal Auditor to turn over the collections to him. He explained that although there was no written order, memo or circular requiring the collections of the tellers to be turned over to the internal auditor, the tellers still followed the order of the Internal Auditor to turn over to him their collections. Having full trust in him as representative of the

Office of the President, they followed him because they believed that whatever is being ordered by him comes from the President. When petitioner was appointed Internal Auditor in 1979, he disclosed that the latter began to change all their procedures. He added that the Internal Auditor checks the work of the tellers, Accountant and the Treasurer and whatever corrections he makes on the work of the Treasurer, he considers to be conclusively correct because he trusts him, he being a Certified Public Accountant.

Emely Pajarillaga^[26] narrated that she has been the Bookkeeper of the WUP since May 1980. As bookkeeper, her duties include recording cash disbursements based on paid vouchers, collections based on abstracts given by the tellers, and official receipts in the cash receipts book. She said she does not know about the collections of Elsa A. Dantes and Merceditas Manio on 15 November 1982 and the succeeding dates mentioned in the informations. It was through Joaquin Cunanan and Company that she, together with the school, learned about the missing funds. She explained that she is under the Accounting Department headed by Jose Ferrer, which is separate from the Internal Auditing Office headed by petitioner. The Internal Auditing Office, she declared, is not under the supervision of the Accounting Office.

Librada D. Lacson^[27] testified that she has been an employee of the WUP and is the younger sister of the President of WUP, Dr. Gloria D. Lacson. He knows petitioner to be the former Internal Auditor of WUP. She narrated that after three years of looking for petitioner because of the criminal cases filed against him, petitioner was arrested in Parañaque by two policemen from Baclaran. At the time of petitioner's arrest, she said she was a few meters away. They thereafter brought petitioner to Cabanatuan City and entrusted him to the Cabanatuan City Police Department. For the apprehension of petitioner, the reward of P20,000.00 given by Dr. Gloria D. Lacson was divided among her, the two policemen, the driver, and another civilian. She explained that when petitioner was apprehended, the arresting officers were armed with a warrant of arrest which she said was issued sometime between the years 1986 and 1987 after petitioner disappeared.

Inocencia Sarmenta^[28] testified that she is the Treasurer of WUP and has known petitioner since 1981. Her duties, among other things, are to take custody of the school's monies which come to her possession and to see to it that its obligations are paid. In handling the monies, she keeps receipts which she has signed together with the deposit slips and passbook. As Treasurer, she explained that the procedure of the flow of money from the teller up to the time it reaches her possession is that the teller turns over the money to Cielito Gan who is supposed to turn over the monies to her. She said that this was the procedure prescribed by petitioner when the latter was appointed Internal Auditor and it was the latter who instructed the tellers thereof. As evidence of the teller that the money is turned over to the Internal Auditor, the teller prepares a CTOS which the teller gives to the Internal Auditor, together with the money. After the money is audited by the Internal Auditor, he is supposed to turn it over to her on the same date. After she receives the money, she prepares the four copies of the deposit slip and then deposits the money in their depositary bank. Prior to the appointment of petitioner as Internal Auditor, the procedure was for the tellers to turn over the money to the Treasurer. She disclosed that she did come across the CTOS marked Exhibits "A" to "J." Since the monies were not turned over to her, it only means that the same went to petitioner. She added that being a co-employee, she knows the signature of the petitioner and

that his signature appears in the CTOS.

Ms. Sarmenta said that when the new procedure was implemented, she did not take any step to question it because petitioner was directly under the Office of the President and as Internal Auditor, he has the authority to implement it. She learned in the later part of August 1984 from the school's External Auditor, Joaquin Cunanan and Company, that the CTOS involved in this case were not turned over to her. When she learned of the loss, she was not able to talk to petitioner because he was already absent without official leave (AWOL) and was no longer in the office. She talked to the tellers who informed her that they gave the money covered by the subject CTOS to petitioner. The President of WUP, she said, asked that petitioner be located. She added that a Fact Finding Committee was formed by the school and that petitioner was found to be at fault. Finally, she said the money that was not missing was deposited by her in the bank.

Jose C. Reyes,^[29] a partner of the Joaquin Cunanan and Company, testified that the company has been the External Auditor of WUP since 1977. It conducted yearly audit on WUP and in the audit of the 31 May 1984 financial statement, the auditors became suspicious because they noted that collections remained undeposited contrary to the 31 May 1984 bank reconciliation. After informing the president of the suspicious entries, they widened the scope of their examination and asked for the CTOS. The company was hired for a special audit in September 1984. They focused only on cash and discovered that P1.7 million covering the period 1981 to 1984 cannot be accounted for. Said finding was contained in their report.^[30]

He revealed that although he had no personal participation in the preparation of the report, they did the actual examination since he was still there and that the result is in their possession. The report, he said, is based on the working papers consisting of documents, CTOS and receipts. The CTOS^[31] involved in this case, except for one, ^[32] are included in the report.

He explained that there is a ruling in Accounting that no one or no person shall be in-charge of all phases of the transaction. In the case of WUP, petitioner, as Internal Auditor, was able to get hold of the collections and this is "a very strong violation" of a good internal audit and accounting, because the internal auditor can easily manipulate the records. The ordinary procedure of WUP was for the teller who receives the collections to turn over the same directly to the treasurer and then the treasurer deposits the money in the bank. From the CTOS they examined, they learned that this procedure was not followed by petitioner because the collections still passed through him. He added there was a turnover of CTOS to the treasurer but not actually the amounts received from the teller.

He further explained that the anomaly was discovered only during the regular audit for 1984. During the special audit, as noted in their report, they tried to account for all the CTOS that the tellers prepared, but neither the tellers' copy nor the treasurer's copy can be accounted for.

Petitioner Cielito R. Gan testified that prior to his appointment in June 1979 as Internal Auditor of WUP, he was a student assistant in the Accounting Office from 1973 to 1974 and bookkeeper from 1974 until he was appointed Internal Auditor. As Internal Auditor, he emphasized it is not his duty to have custody of funds. It is the