

## FIRST DIVISION

**[ G.R. NO. 164545, November 20, 2006 ]**

**LORBE REBUCAN Y BALTAZAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

In this Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Revised Rules of Court, petitioner Lorbe Rebucan y Baltazar prays for the reversal of the Decision dated 12 March 2004<sup>[2]</sup> and Resolution dated 2 July 2004<sup>[3]</sup> of the Court of Appeals, affirming with modifications the Decision dated 6 November 2001<sup>[4]</sup> of the Regional Trial Court (RTC), Branch 2, Kalibo, Aklan, in Criminal Cases No. 4625, 4626, 4629, 4630, 4631, 4632, 4633, 4635, 4636, 4637, 4638, 4639, and 4640, finding petitioner guilty beyond reasonable doubt of 13 counts of the crime of Qualified Theft.

On 23 February 1996, petitioner was charged with 13 counts of the crime of qualified theft in 13 separate Informations.<sup>[5]</sup> The Information in Criminal Case No. 4625 reads:

That on or about 27<sup>th</sup> day of February, 1994, in Poblacion, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused who was then the Cashier of Thumbelina Books and Supplies owned by Mrs. GRAZIA ATHENA C. ZAULDA, with grave abuse of confidence and intent of gain, did then and there willfully, unlawfully, and feloniously take, steal, and appropriate for her personal use and benefit the amount of Three Hundred Pesos (P300), without consent of said owner, to the latter's damage and prejudice in the aforesaid amount.<sup>[6]</sup>

The Informations in Criminal Cases No. 4626, 4629, 4630, 4631, 4632, 4633, 4635, 4636, 4637, 4638, 4639 and 4640 are similarly worded with the afore-quoted Information except in the dates of the commission of the crime and the amounts allegedly stolen. The following are the case numbers, dates of the commission of the crime and the amounts involved in the said cases:

<u>Case No.</u>	<u>Amount</u>	<u>Date of Commission</u>
4626	P 250.00	26 February 1994
4629	550.00	21 February 1994
4630	300.00	19 February 1994
4631	100.00	18 February 1994
4632	200.00	17 February 1994
4633	200.00	14 February 1994
4635	511.50	9 February 1994

4636	549.95	5 February 1994
4637	400.00	6 February 1994
4638	700.00	7 February 1994
4639	100.00	30 January 1994
4640	400.00	24 February 1994

When arraigned in all the cases on separate dates, petitioner pleaded not guilty to the charges. Trial on the merits thereafter ensued.

The facts according to the prosecution are as follows:

Sometime in 1980, petitioner was employed as a saleslady of Thumbelina Books and Office Supplies (TBOS) located at 19 Martyrs St., Kalibo, Aklan, and owned by private complainant Grazia Athena Zaulda. In 1990, petitioner was promoted therein as a cashier. Her tasks as such were to receive the daily sales of TBOS; to remit the cash to private complainant or the latter's authorized representatives, namely, Emma Retiro (Emma) and Monica Ili-Zausa (Monica) twice a day – first at 12:00 in the afternoon and second at 5:00 in the afternoon; and to list and compute all cash purchases for the day on a ruled sheet of paper reflecting every purchase made by customers.<sup>[7]</sup>

On the morning of 28 February 1994, while private complainant was inspecting the operations of TBOS, she noticed that her employees used the sheets of paper containing the lists and computations of purchases as wrappers for the rolled *cartolina* paper and Manila paper merchandises of TBOS. Out of curiosity, private complainant took one of the lists dated 27 February 1994 and computed the figures/purchases stated therein. To her shock and disbelief, she discovered that the computation/addition in one of the columns under the name "Bhing" (the nickname of petitioner) was understated. She removed the other lists from the stocks of rolled cartolina paper and Manila paper and examined the same. Again, she found that the computations in some of the columns under the name "Bhing" were understated.<sup>[8]</sup>

On that same day after lunch, she confronted the petitioner about the understatements in the listings. Caught by surprise, petitioner trembled and told her in their native dialect, "*Kon pila ron nang hay bayaran ko*" (Whatever the amount is, I will pay). She asked petitioner to elaborate on the understatements in the listings but the latter did not say a word. Hence, private complainant told petitioner to take a vacation.<sup>[9]</sup>

Subsequently, she instructed Emma and Monica to look for other listings which may have also been understated by the petitioner. They found more understated listings under the nickname of petitioner. Later, she told the petitioner to proceed to the TBOS. When the petitioner arrived, she showed to her the understated lists but the latter merely looked at it and kept her silence.<sup>[10]</sup> Left with no other recourse, she told the petitioner that her employment was already terminated.<sup>[11]</sup> Thereafter, she filed a complaint for 72 counts of qualified theft against petitioner at the Office of the Provincial Prosecutor, Kalibo, Aklan.<sup>[12]</sup>

Petitioner, on the other hand, vehemently denied the accusations of private complainant. Her defenses and arguments are summarized in the Decision of the RTC dated 6 November 2001, to wit:

[T]hat before she was employed initially as a saleslady with the Thumbelina Bookstore and Office Supplies in 1982; that this store is owned by Mr. And Mrs. Lolly Zaulda [private complainant]; that her last day of employment thereat was on February 28, 1994 as cashier; that she denies the accusations by the complainant in these cases as well as the testimonies of the witnesses against her that she deliberately made understatements in her listings during her term as cashier thereat; that it is not true also that she pocketed some money which were in her possession as such cashier; that the nature of her work as cashier was, at the start of the day, she first prepared a grade one pad paper, wrote thereon the respective salesladies and listed the sales for the day; that all cashiers (four of them) were provided with ballpens, calculator, and adding machine and a cash register but the latter was kept upstairs after using it for about four years; that the listing recorded on a pad paper were turned over twice a day and during busy days, four times a day; that these listings were picked up by Monica Ili [Monica Ili-Zausa] and Emma Retiro from the cashiers to be brought by them upstairs; x x x that these listings with alleged discrepancies shown by the prosecution where she listed the items brought by the customers from the Thumbelina Bookstore and Office Supplies are the same in appearance; that the Thumbelina store is a two-story establishment; that when the items were brought upstairs by Monica Ili-Zausa and Emma Retiro, they did not go with them but stayed on (sic) their posts; that they knew that all these listings when brought upstairs were being checked one by one; that the amount corresponding to those in the listings were collected during closing time at about 5:30 p.m.; that they knew how much cash was collected and turned over upstairs by means of a piece of paper from the adding machine they called "tape" to reconcile with it with the cash in hand; that those present when the listings were being checked in notation to the cash money were the salesladies and the cashiers; that this practice was a usual daily routine; that in the afternoon after the turned over of the cash, they waited downstairs; that during lunchtime she went home for lunch because she had a baby to breast feed; that when she came back in the afternoon the listings were being used for the afternoon sales and when there were still spaces, to be used for the following morning sales; that in summation for the listings to be brought upstairs, they used ballpens, adding machine and calculator; that for the first time on February 28 1994, she was confronted upstairs by Mrs. Zaulda the alleged discrepancies in the listings; that she did not know where Mrs. Zaulda got the listings with alleged discrepancies but the others were the listings she had before; that during the confrontation she explained to Mrs. Zaulda that those listings were being checked every afternoon; that she was asked to make a refund but she refused; that it is not true that she made an offer to pay the same; that she was then told by Mrs. Zaulda of her dismissal from her job and [afterwards] she went home.

That one week after her dismissal from her job she went back to the Thumbelina Bookstore and Office Supplies to ask for her A-1 Form so that she could continue her SSS membership but Mrs. Zaulda replied that she could no longer afford to pay her membership fee due to her being unemployed; that she then went to the Provincial DOLE Office for an

opinion; that a labor case was then filed against Mrs. Zaulda in 1994; that during the course of her employment with the Thumbelina Bookstore and Office Supplies, no disciplinary action was filed against her in connection with her work performance as cashier nor did she ever pocketed money belonging to the store; that she was shown of (sic) all the listings allegedly with discrepancies for her to check one by one the listings for any possible insertions or erasures therein and found none except in Exhibit "D-2"; that on the fourth page thereof those were not in her own handwriting. Xxx

x x x [T]hat maybe they [private complainant, Monica and Emma] made insertions because the total amount of the summation became different; that the reason why she went to the Department of Labor was to seek assistance for her right which they took for granted by dismissing her for no reason at all; that she filed the case against Mrs. Zaulda ahead of these cases she filed against her; that she met again Mr. And Mrs. Zaulda in the office of Atty. Icamina [counsel of private complainant] where she was asked to withdraw the case [illegal dismissal case] she filed against them and for them to withdrew these cases they filed against her but she did not agree to their proposal; that aside from these cases, other cases were filed against her in Branch 1 but were dismissed (Exh. "1") while the other cases in Branch 3 were archived. x x x.<sup>[13]</sup>

On 6 November 2001, the RTC rendered its Decision finding petitioner guilty of 13 counts of qualified theft.<sup>[14]</sup> It gave full faith and credence to the testimonies of the prosecution witnesses (private complainant, a certain Melanie Retiro and Monica) who all declared that the understated lists were the "sole handiwork" of petitioner since they are all very familiar with the handwriting of petitioner and that they were the co-employees of the petitioner at the TBOS for a number of years.<sup>[15]</sup> It noted that their testimonies were truthful because they were "unrehearsed, straightforward, categorical, natural and spontaneous."<sup>[16]</sup> It also observed that there is no evidence on record which disclosed that the prosecution witnesses were impelled by "improper and ill-motive" to testify falsely against petitioner.<sup>[17]</sup> There was never an instance wherein petitioner and the prosecution witnesses had a misunderstanding prior to the instant cases and that they treated each other as family-members.<sup>[18]</sup>

Furthermore, it held that the systematic method adopted by petitioner in committing the crime, which was the understating of the amount in the lists, was specially adopted by her to forestall detection, and, thus, unless the figures stated in the listings are carefully and meticulously tallied, the shortages and understatements therein cannot be noticed.<sup>[19]</sup> It also found that petitioner was personally recommended by Melanie Retiro (Melanie) to private complainant.<sup>[20]</sup> Since Melanie is a trusted employee/assistant of the private complainant, the latter accepted petitioner to work at the TBOS.<sup>[21]</sup> During the initial period of her work as a saleslady at the TBOS, petitioner had proved to the private complainant that she could be trusted. Thus, she was promoted to the position of cashier at the TBOS. Subsequently, however, petitioner had abused the trust and confidence of private complainant by understating the amount in the lists and used the money for her

personal benefit. It opined that petitioner's easy access to the cash could have "bedevilled" her to commit the crime.<sup>[22]</sup> In conclusion, the RTC ruled:

WHEREFORE, the Court finds the accused LORBE BALTAZAR REBUCAN alias "BHING", guilty beyond reasonable doubt of the crime of Qualified Theft (13 counts) and hereby imposes upon her the following penalties:

- (1.) SIX (6) YEARS of Prision Correccional as the minimum to TEN (10) YEARS and EIGHT (8) months of Prision Mayor as the maximum, for Criminal Case Nos. 4625, 4626, 4629, 4630, 4635, 4636, 4637, 4638, and 4640;
- (2.) FIVE (5) YEARS of Prision Correccional as the minimum to TEN (10) YEARS and FOUR (4) MONTHS of Prision Mayor as the maximum, for Criminal Case Nos. 4631, 4632, 4633 and 4639.

Moreover, the Court hereby orders the afore-named accused to pay the private complainant GRAZIA ATHENA ZAULDA the total amount of P4,561.45 as actual or compensatory damages.

With costs against the accused.<sup>[23]</sup>

Unyielding, the petitioner appealed the RTC Decision dated 6 November 2001 with the Court of Appeals. In its Decision dated 12 March 2004, the Court of Appeals affirmed with modifications the ruling of the RTC.<sup>[24]</sup> The modifications pertain only to the penalties imposed by the RTC, thus:

IN VIEW OF ALL THE FOREGOING, the appealed decision is AFFIRMED, with modification that appellant is hereby sentenced to suffer indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional*, as minimum, to NINE (9) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision mayor*, as maximum, for Criminal Cases Nos. 4625, 4626, 4629, 4630, 4635, 4636, 4637, 4638, and 4640;

As to Criminal Cases Nos. 4631, 4632, 4633 and 4639, appellant is hereby sentenced to an indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision correccional*, as minimum, to TEN (10) YEARS, TWO (2) MONTHS and TWENTY-ONE (21) DAYS of *prision mayor*, as maximum. In all other respects, the appealed decision stands.<sup>[25]</sup>

Petitioner filed a Motion for Reconsideration<sup>[26]</sup> of the above-stated decision but the same was denied by the Court of Appeals in its Resolution dated 2 July 2004. Hence, on 30 August 2004, petitioner filed a Petition for Review before this Court raising the following issues for our consideration:

I.

WHETHER THE ACQUITTAL OF HEREIN PETITIONER FROM THE OTHER CHARGES HURLED AGAINST HER CONSTITUTES REASONABLE DOUBT TO WARRANT HER ACQUITTAL OF THE CRIMES SUBJECT OF THE PRESENT