

SIXTH DIVISION[*]

[CA-G.R. CR-HC NO. 05307, February 04, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RHODORA R. CEREZO, DEFENDANT-APPELLANT.**

D E C I S I O N

PERALTA, JR., E. B., J.:

From an adjudication of perdition on February 9, 2011 for *hurto con grave abuso de confianza*,^[1] an appeal was interposed by the accused before Us to assess the disposition against her in this manner:^[2]

*"WHEREFORE, the court finds the accused RHODORA CEREZO **GUILTY** as principal beyond reasonable doubt of QUALIFIED THEFT, and hereby sentences her to suffer the penalty of RECLUSION PERPETUA and to pay the offended party, OMS PHILIPPINES CORPORATION, the amount of Php1,489,731.70.*

SO ORDERED."

Cutting through *minutiae*, the initial indictment for Estafa through Falsification of Commercial Document before the Mandaluyong Prosecutor's Office was amended to Qualified Theft.^[3]

When arraigned on the modified charge^[4] on May 6, 2002, appellant pleaded "Not Guilty"^[5] and upon conclusion of the pre-trial conference, trial on the merits thereafter ensued through the People's testimonial sponsors.

Appellant was first hired as filing clerk in 1991 by OMS Philippines Corporation. She was promoted as Head of the Payroll and Billing Section in January, 1996. Her functions and responsibilities included the preparation of billing statements of their customers and payroll of all the employees both for international and domestic projects. The payrolls were prepared every 15th and 30th day of the month. Appellant would prepare (1) a covering letter instructing Metrobank Boni Avenue Branch to deduct a certain amount from the OMS Savings Account; and (2) a bank transmittal containing the names of the employees, their corresponding salaries and their respective account numbers. The entries in the payroll were based on the number of hours rendered by the employees.

In the last week of October, 1999, appellant went on maternity leave. However, she requested Elmer Lumapguid, the President of the company, that she be allowed to continue preparing the payroll of all employees. Lumapguid acceded because he knew that appellant needed money for her delivery. Lumapguid noticed that despite the fact that appellant was receiving a monthly salary of P10,000.00, she managed to buy a brand new Isuzu vehicle and a house and lot during her employment at the

OMS.

Sometime in November, 1999, while appellant was still on maternity leave, appellant's husband went to the office to submit the payroll for November 16-30, 1999. In a brown envelope where the payroll was placed, Lumapguid found a bank withdrawal slip and a bank transmittal with a note to Manang Virgie, the Cashier of the Company, with jottings: *"To Manang Virgie, withdrawal, P21,000.00; PD P8,500.00; collection P29,500."*

Lumapguid suspected that there was an anomaly in the preparation of the payroll. He then sought the help of the Operation Manager to verify the payroll prepared by appellant. Upon verification, they found out that there was a discrepancy between the payroll made by appellant and the computation made by the Operation Manager. The discrepancy was more or less equal to the bank withdrawal slip found in a small letter envelope. They discovered a Metrobank ledger of account of appellant and learned that every payday, she would deposit P25,000.00 to P30,000.00 to her savings account at the Metrobank Boni Avenue Branch.

Lumapguid thereafter hired the services of an Auditor to verify the discrepancy between the bank transmittal and the payroll. It was discovered on the Audit Report that appellant had been misappropriating money from OMS since 1997 which amounted to P1,489,731.70.

After further investigation, Lumapguid ascertained that appellant resorted to two (2) modes of stealing money from the company. The first mode was her preparation of two sets of payroll: one with the overstated amount and the second is the real payroll, where appellant will submit the bank transmittal for the signature of the treasurer and herself and she will attach the overstated figures, then after signing, she would replace it with the real payroll and write her name under the Savings Account Number with the Metrobank, Boni Avenue Branch. The second mode employed by appellant was her preparation of an overstated amount but the figure will be named only to one person under the account of Fidelito Garcia and the difference would be credited to Garcia's account and the latter will sign a bank withdrawal slip for the accused to withdraw the amount in the account of Garcia.

Appellant was requested to report to the office to explain her side. When appellant arrived, she was apologetic and even promised to pay the amount she got. However, after the expiration of her maternity leave, appellant no longer reported back to work. A Demand Letter^[6] was sent to her, but to no avail.

To controvert the evidence of the prosecution, the accused sat on the witness and the crux of her exculpation was premised on denial.^[7]

After trial, the court *a quo* rendered the verdict on February 9, 2011,^[8] which adjudged appellant guilty beyond reasonable doubt for the amended charge, and her subsequent Motion for Reconsideration^[9] was denied in an Order^[10] dated October 7, 2011.

Thus, appellant sought recourse before this Court, which imputed the sole assignment of error supposedly committed by the court *a quo*:

"THE HONORABLE COURT, WITH DUE RESPECT, COMMITTED AN ERROR IN CONVICTING THE ACCUSED AS THE PROSECUTION FAILED TO PROVE HER GUILT BEYOND REASONABLE (SIC)."^[11]

After examining the record on hand, We find no cogent foundation to overrule the trial court's observations.

Article 308 of the Revised Penal Code is the general repository of hurto or larceny in American Law:^[12]

"ART. 308. Who are liable for theft.--Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

- 1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;*
- 2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and*
- 3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products."*

Accordingly, the elements of the crime of Theft are as follows: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.^[13]

Theft becomes qualified under *Art. 310 of the RPC*, when it is, among other matters, committed with grave abuse of confidence, thusly:

*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.*

Necessarily, theft is qualified when any of the following circumstances is present: (1) the theft is committed by a domestic servant; (2) the theft is committed with **grave abuse of confidence**; (3) the property stolen is either a motor vehicle, mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic