

## THIRD DIVISION

[ G.R. No. 176504, September 03, 2008 ]

**FERDINAND A. CRUZ, PETITIONER, VS. THE 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 assails the Decision<sup>[1]</sup> dated 27 April 2006 of the Court of Appeals in CA-G.R. CR No. 27661 which affirmed the Decision<sup>[2]</sup> and the Order<sup>[3]</sup> of the Regional Trial Court (RTC) of Makati City, Branch 140, finding petitioner Ferdinand A. Cruz (Ferdinand) guilty beyond reasonable doubt of the crime of Qualified Theft.

On 10 July 1997, an Information was filed before the RTC of Makati City charging Ferdinand with Qualified Theft. The accusatory portion of the Information reads:

That on or about the 25<sup>th</sup> day of October 1996, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being then employed as Marketing Manager of Porta-Phone Rentals, Inc. with office address located at 3/F ENZO Bldg., Sen. Gil Puyat Avenue, Makati City, herein represented by Juanito M. Tan, Jr. and had access to the funds of the said corporation, with intent to gain and without the knowledge and consent of said corporation, with grave abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal and carry away the amount of P15,000.00 belonging to said Porta-Phone Rentals, Inc., to the damage and prejudice of the latter in the aforesaid amount of P15,000.00.<sup>[4]</sup>

The case was docketed as Criminal Case No. 97-945. During the arraignment on 22 August 1997, Ferdinand, with the assistance of counsel *de parte*, entered a plea of not guilty.<sup>[5]</sup> Thereafter, trial on the merits ensued.

At the trial, the prosecution presented the following witnesses: (1) Juanito M. Tan, Jr., the General Manager of Porta-Phone Rentals, Inc. (Porta Phone) when the incident in question took place. He testified that Ferdinand appropriated for himself the amount of P15,000.00, an amount which should have been remitted to the company; (2) Catherine Villamar (Catherine), the Credit and Collection Officer of Porta-Phone, who discovered that Ferdinand issued a receipt for P15,000.00 from Hemisphere-Leo Burnett (Hemisphere), and who also testified that Ferdinand misappropriated the amount for his own benefit and, when she confronted him, said he had unpaid reimbursements from the company; (3) Luningning Morando, the accounting supervisor of Porta-Phone, corroborated the alleged fact that Ferdinand received the amount and did not turn over the same to the company; and (4) Wilson J. So, Chief Executive Officer of Porta-Phone, who testified that meetings

were held to demand from Ferdinand the subject sum of money.

As documentary evidence, the prosecution offered the following: Exhibit "A" - Official Receipt No. 2242, the receipt in which Ferdinand acknowledged that he received the amount of P15,000.00 from Hemisphere; Exhibit "B" - the Minutes of the Meeting held on 30 October 1996 attended by Wilson So, Juanito Tan, Luningning Morando and Ferdinand, wherein Wilson So asked Ferdinand the reason for the former's refusal to remit the P15,000.00 to the company, and Ferdinand answered that there was no need to turn over the said amount because he had outstanding reimbursements from the company in the amount of P8,518.08; Exhibit "C" - the Resignation Letter of Ferdinand; Exhibit "D" - the Inter-Office Demand Letter dated 7 November 1996, addressed to Ferdinand from Juanito M. Tan, Jr. requiring the former to return the amount of P15,000.00; Exhibit "E" - the Handwritten Explanation of Ferdinand dated 8 December 1996, that he remitted the amount to Luningning Morando; Exhibit "F"- Inter-Office Memorandum dated 8 November 1996, issued by Juanito Tan and addressed to Luningning Morando to explain her side regarding the allegation of Ferdinand that she received the P15,000.00; Exhibit "G"- Inter-Office Memorandum prepared by Luningning Morando dated 9 November 1996, denying the allegation that she received the amount of P15,000.00 from Ferdinand; Exhibit "H"- Inter-Office Memorandum dated 11 November 1996, issued by Juanito Tan for Ferdinand to further explain his side in light of Luningning Morando's denial that she received the amount. It also advised Ferdinand to wait for the verification and computation of his claim for reimbursements; Exhibit "I"- Formal Demand Letter dated 25 November 1996, addressed to Ferdinand and issued by the legal counsel of Porta-Phone Rentals, Inc., asking the former to return to the company the subject amount; Exhibit "J"- the Affidavit of Complaint executed by Juanito Tan against Ferdinand; Exhibit "K"- the Collection List dated 30 October 1996, showing that Ferdinand received from Hemisphere the amount of P15,000.00, and the same was not turned over to Catherine; Exhibit "L"- Reply-Affidavit dated 5 February 1997, executed by Juanito M. Tan, Jr.; Exhibit "M"- the Sur-Rejoinder Affidavit of Juanito M. Tan, Jr. dated 21 February 1997.

The collective evidence adduced by the prosecution shows that at around 5:30 p.m. of 25 October 1996, in the City of Makati, Ferdinand, who is a Marketing Manager of Porta-Phone, a domestic corporation engaged in the lease of cellular phones and other communication equipment, went to the office of Porta-Phone located on the third floor of Enzo Building, Senator Gil Puyat Avenue, and took hold of a pad of official receipts from the desk of Catherine, Porta-Phone's collection officer. With the pad of official receipts in his hands, Ferdinand proceeded to his client, Hemisphere, and delivered articles of communication equipment. Although he was not an authorized person to receive cash and issue receipts for Porta-Phone, Ferdinand received from Hemisphere the amount of P15,000.00 as refundable deposit for the aforesaid equipment. On 26 October 1996, Ferdinand went to Porta-Phone and returned the pad of receipts, but failed to deliver the cash he received from Hemisphere. On 28 October 1996, the next working day, Catherine checked the booklet of official receipts and found that one of the official receipts was missing. The green duplicate of the missing official receipt, however, showed that Ferdinand received the amount of P15,000.00 from Hemisphere. Upon learning of Ferdinand's receipt of the said amount, Catherine confronted Ferdinand, who answered that he deposited the amount to his personal bank account. Catherine then instructed Ferdinand to remit the amount the next day.<sup>[6]</sup> Catherine reported the incident to

the accounting supervisor, Luningning Morando, who, in turn, reported the same to the General Manager, Junito Tan. The following day, Ferdinand went to the office but did not deliver the amount to Catherine, reasoning that Porta-Phone still owed him unpaid reimbursements.<sup>[7]</sup> This incident came to the knowledge of Chief Executive Officer Wilson So. Thus, on 30 October 1996, Wilson So invited Ferdinand, Juanito and Luningning to a meeting. In the meeting, Wilson So demanded that Ferdinand return the collection. Ferdinand refused to turn over the amount to the company. He would return the amount only upon his receipt of his reimbursements from the company. Since Ferdinand adamantly withheld the collected amount, Juanito issued a demand letter dated 7 November 1996, ordering the former to deliver the amount to the company. Ferdinand answered, this time claiming that he had already remitted the amount to Luningning. With this, Juanito issued a memorandum dated 8 November 1996, addressed to Luningning asking her to explain her side regarding the allegation of Ferdinand that she received the P15,000.00. Luningning completely denied having received the amount from Ferdinand. Juanito then issued another letter to Ferdinand to further explain his side in view of Luningning's denial that she received the amount. In the letter, Juanito also advised Ferdinand to wait for the verification and computation of his claim for reimbursements. With the conflicting claims of Luningning and Ferdinand, another meeting was set on 14 November 1996. In that meeting Luningning again denied having received the amount. Ferdinand did not appear in the meeting. Later, a formal demand letter was issued to Ferdinand by Porta-Phone's legal counsel, which letter went unheeded. Several attempts to reach Ferdinand proved to be futile. This prompted the company to file a criminal complaint against Ferdinand.

The defense alleged that the amount involved was already turned over to the company through Luningning. To substantiate this, the defense presented Ferdinand as its only witness.

Ferdinand testified that on 25 October 1996, he delivered to Hemisphere several communication gadgets and received from the same the amount of P15,000.00 as refundable deposit (the amount required by Porta-Phone from its lessor-client to answer for the damage that may befall the items leased) for the delivered items. Since he did not bring with him the official receipt of Porta-Phone, he merely acknowledged having received the amount in an Acknowledgement Receipt issued by Hemisphere. Considering that it was already late in the afternoon when he delivered the communication items, Ferdinand brought the said amount home. The following day, he went to the company's accounting supervisor, Luningning, to turn over to her the amount. Luningning received the money and instructed Ferdinand to fill up the details of the transaction in Official Receipt No. 2242. When Ferdinand asked Luningning to affix her signature to the official receipt to acknowledge that she received the amount, the latter declined and instead asked the former to affix his signature, since it was he who closed the deal.

Later, on 28 October 1996, Catherine approached him and asked him to affix his signature to the triplicate copy of Official Receipt No. 2242.

Ferdinand admitted that he attended the meeting of 30 October 1996 with Juanito, Luningning and Wilson So. He, however, claimed that the discussion centered on his entitlement to reimbursements from the company. Thereupon, Wilson So got angry with him and asked him to resign, owing to his persistent claim for reimbursement. After this, the company withheld his salary, prompting him to file a labor case

against the same on 4 November 1996.

On 30 June 2001, the RTC rendered a decision finding Ferdinand guilty beyond reasonable doubt of the crime charged. The decretal portion of the RTC decision reads:

WHEREFORE, finding the accused FERDINAND A. CRUZ, GUILTY beyond reasonable doubt for the crime of QUALIFIED THEFT, he is hereby sentenced to suffer imprisonment of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum; to indemnify the offended party in the amount of FIFTEEN THOUSAND (P15,000.00) PESOS and to pay the costs.<sup>[8]</sup>

On 2 August 2001, Ferdinand filed a Motion for New Trial on two grounds: (1) absence of a preliminary investigation for the crime of qualified theft; and (2) newly discovered evidence. Anent the first ground, it must be noted that in the beginning, Ferdinand was being indicted for Estafa/Falsification of Private Document. The prosecutor later found that the proper charge should be for Qualified Theft. Ferdinand argued that since his counter-affidavits were for the charge Estafa/Falsification of Private Document, he claimed that preliminary investigation for Qualified Theft was absent. With regard to the second ground, Ferdinand argued that newly discovered evidence, *i.e.*, the testimony of a certain Marilen Viduya, could change the judgment on the case. The RTC granted the motion based on the second ground, and set aside its 30 June 2001 decision.

Marilen Viduya, a former employee of Hemisphere, testified that she asked Ferdinand to affix his signature to an acknowledgement receipt for the amount of P15,000.00, which was the refundable deposit of Hemisphere for the equipment delivered, because Ferdinand did not bring with him the official receipt of Porta-Phone. She also averred that Luningning went to Hemisphere and conducted an inventory of the delivered communication items. Luningning admitted to her that the P15,000.00 was already remitted to Porta-Phone.

In an Order<sup>[9]</sup> dated 15 July 2003, the RTC declared that it did not find the testimony of Marilen Viduya persuasive. It revived and reinstated its 30 June 2001 decision convicting Ferdinand of the crime charged.

Dissatisfied, Ferdinand appealed the judgment to the Court of Appeals.

The Court of Appeals, on 27 April 2006, promulgated its Decision affirming the decision of the RTC, thus:

WHEREFORE, the present appeal is DENIED. The 30 June 2001 Decision of the Regional Trial Court, Branch 140, in Makati City, is hereby AFFIRMED.<sup>[10]</sup>

Ferdinand filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated 4 October 2006.

Hence, the instant petition.