

THIRD DIVISION

[G.R. NO. 159734, November 30, 2006]

**ROSARIO V. ASTUDILLO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

[G.R. NO. 159745]

**FILIPINA M. ORELLANA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioners Rosario "Baby" Astudillo (Rosario) and Filipina "Lina" Orellana (Filipina) via separate petitions for review on certiorari seek a review of the Decision^[1] and the Resolution^[2] of the Court of Appeals affirming with modification that of the Regional Trial Court of Quezon City, Branch 78^[3] (the trial court) finding them guilty of Qualified Theft and denying their Motions for Reconsideration, respectively.

On complaint of Western Marketing Corporation (Western), petitioners were collectively charged with Qualified Theft, along with Flormarie Robel (Flormarie) and Roberto Benitez (Benitez), in **Criminal Case No. Q-96-67827**, under an Information dated September 9, 1996 reading:

The undersigned accuses FLORMARIE CALAJATE ROBEL, ROBERTO F. BENITEZ, ROSARIO ASTUDILLO a.k.a. "Baby" and FILIPINA ORELLANA Y MACARAEG of the crime of QUALIFIED THEFT as follows:

That during the period comprised from January 1996 to February 1996, the above-named accused, being then employed as relieving cashier/service-in-charge (Flormarie Calajate Robel), supervisor/floor manager (Roberto F. Benitez[]), sales clerks (Rosario Astudillo a.k.a. "Baby" and Filipina Orellana y Macaraeg) at the WESTERN MARKETING CORPORATION, represented by LILY CHAN ONG, and as such had free access to the company premises, materials, supplies and items store[d] thereat, **conspiring, confederating together and mutually helping one another**, with grave abuse of confidence and intent of gain, and without the consent of the owner thereof, did, then and there wilfully, unlawfully and feloniously take, steal and carry away two (2) booklets of Sales Invoices Nos. from 128351 to 128400 of the said corporation and thereafter use the said invoices in the preparation of fictitious sales and withdrawals of merchandise with the total value of P797,984.00 Philippine Currency, belonging to the said WESTERN MARKETING CORPORATION, to its damage and prejudice.

CONTRARY TO LAW.^[4] (Emphasis supplied)

Additionally, petitioners, Benitez and Norberto "Carlo" Javier (Javier) were individually charged also with Qualified Theft in four (4) separate Informations all dated September 9, 1996.

The Information indicting petitioner Rosario, docketed as **Criminal Case Nos. Q-96-67829**, and that indicting petitioner Filipina, docketed as **Q-96-67830**, respectively read:

The undersigned accuses ROSARIO ASTUDILLO a.k.a. "Baby" of the crime of QUALIFIED THEFT as follows:

That on or about the period from May 1, 1994 to February 16, 1996, in Quezon City, Philippines, the above-named accused, being then employed as sales representative/clerk at the WESTERN MARKETING CORPORATION (P. Tuazon Branch), represented by LILY CHAN ONG, and as such had free access to the company cash sales, with grave abuse of confidence and intent of gain, and without the consent of the owner thereof, did, then and there, wilfully, unlawfully and feloniously take, steal and carry away the excess sum/amount between the tag price and discounts price in the sum of P12,665.00, belonging to the said WESTERN MARKETING CORPORATION, to its damage and prejudice in the amount aforementioned.

CONTRARY TO LAW.

x x x

The undersigned accuses FILIPINA ORELLANA Y MACARAEG of the crime of QUALIFIED THEFT, committed as follows:

That on or about the period from May 1, 1994 to January 27, 1996, in Quezon City, Philippines, the above-named accused, being then employed as Sales clerk at the WESTERN MARKETING CORPORATION, represented by LILY CHAN ONG, and as such had free access to the company cash sales, with grave abuse of confidence and intent of gain, and without the consent of the owner thereof, did, then and there, wilfully, unlawfully and feloniously take, steal and carry away the excess sum/amount between the tag price and discount price of each and every items sold by her to company customers, in the sum of P4,755.00, belonging to the said WESTERN MARKETING CORPORATION, to its damage and prejudice in the amount aforementioned.

CONTRARY TO LAW.^[5]

Petitioners, Benitez and Javier, with the assistance of their respective counsel, pleaded not guilty during arraignment.^[6] Flormarie has remained at large.

By Order of December 10, 1997, Criminal Case No. Q-96-67828, the case against Javier, was dismissed on account of the desistance of the private complainant.^[7] The remaining cases against petitioners and Benitez were consolidated for joint trial.

By Decision of May 28, 1998, the trial court found the accused-herein petitioners and Benitez guilty beyond reasonable doubt of Qualified Theft and were accordingly sentenced as follows:

IN CRIMINAL CASE NO. Q-96-67827 –

Accused Roberto F. Benitez, Rosario Astudillo a.k.a. "Baby", and Filipina Orellana y. Macaraeg shall each suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the amount of P797,984.00, jointly and severally for their civil liability;

IN CRIMINAL CASE NO. Q-96-67829 –

Accused Rosario Astudillo a.k.a. "Baby", shall suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the amount of P12,665.00 for her civil liability;

IN CRIMINAL CASE NO. Q-96-67830 –

Accused Filipina Orellana y. Macaraeg, shall suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the sum of P4,755.00 for her civil liability; and

IN CRIMINAL CASE NO. Q-96-67831 –

Accused Roberto F. Benitez, shall suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, of reclusion temporal, and to pay the amount of P11,079.00 for his civil liability.

The penalties imposed on all the accused are quite harsh, but as the maxim goes, "Dura Lex Sed Lex", the Court could not impose otherwise.

SO ORDERED.^[8] (Emphasis in the original; underscoring supplied)

Petitioners and Benitez elevated their cases on appeal. The Court of Appeals affirmed the trial court's judgment with modification as to the penalties imposed, thus:

WHEREFORE, the decision dated May 28, 1998 of the Regional Trial Court of Quezon City, Branch 78 is **AFFIRMED with MODIFICATION**.

1. In Criminal Case No. Q-96-67827, appellants Roberto Benitez, Rosario Astudillo and Filipina Orellana are found guilty beyond reasonable doubt of qualified theft and are hereby sentenced to suffer the penalty ranging from 10 years and 1 day of prision mayor

in its maximum period to 15 years of reclusion temporal as maximum, and to pay to the offended party the amount of P797,984.00, jointly and severally, as reparation for the unrecovered stolen merchandise;

2. In Criminal Case No. Q-96-67829, appellant Rosario Astudillo is found guilty beyond reasonable doubt of qualified theft and is sentenced to suffer imprisonment ranging from 10 years and 1 day of prision mayor in its maximum period as minimum to 14 years, 8 months and 1 day of reclusion temporal in its medium period as maximum, and to pay to the offended party amount of P12,665.00 as reparation for the stolen goods.
3. In Criminal Case No. Q-96-67830, appellant Filipina Orellana is found guilty beyond reasonable doubt of qualified theft and is sentenced to suffer imprisonment ranging from 4 years, 2 months and 1 day of prision correccional in its maximum period as minimum to 8 years and 1 day of prision mayor in its medium period as maximum and to pay to the offended party the amount of P4,755.00 as reparation for the stolen property;
4. In Criminal Case No. Q-96-67831, appellant Roberto Benitez is found guilty beyond reasonable doubt of qualified theft and is sentenced to suffer imprisonment ranging from 6 years and 1 day of prision mayor in its minimum period as minimum to 10 years and 1 day of prision mayor in its maximum period as maximum and to pay to the offended party the amount of P11,079.00 as reparation for the stolen goods.

SO ORDERED.^[9] (Emphasis in the original; underscoring supplied)

After petitioners and Benitez's respective Motions for Reconsideration were denied by the Court of Appeals, petitioners filed these separate petitions for review which were, on motion of the Office of the Solicitor General, ordered consolidated.^[10]

In her petition, Rosario proffers the following assignment of errors:

THE COURT A QUO GRIEVOUSLY ERRED WHEN IT CONSIDERED AN APOLOGY FOR BREACH OF PROCEDURE AS AN ADMISSION OF A CRIME.

THE COURT A QUO ERRED WHEN IT DEPARTED [FROM] THE NORMAL COURSE OF JUDICIAL PROCEEDING AND CONVICTED PETITIONER OF THE OFFENSE OF THEFT WITHOUT THE ESSENTIAL ELEMENT OF UNLAWFUL TAKING.

THE COURT OF A QUO (*sic*) GRIEVOUSLY ERRED WHEN IT ABUSED ITS DISCRETION TO ARRIVE AT CONCLUSIONS OF FACTS BY INDECENTLY CONSIDERING AND DISTORTING EVIDENCE TO CONFORM TO ITS FLAWED CONCLUSION.^[11] (Underscoring supplied)

On her part, Filipina raises the following issues:

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT CONVICTING THE PETITIONER FILIPINA ORELLANA Y MACARAEG OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF EVIDENCE

WHETHER OR NOT AN EXTRA-JUDICIAL ADMISSION OBTAINED THROUGH TRICKERY AND SCHEME WITHOUT THE BENEFIT AND ASSISTANCE OF COUNSEL IS A SUFFICIENT GROUND TO CONVICT AN ACCUSED

WHETHER OR NOT CONSPIRACY MAY BE PROVED SIMPLY ON THE GROUND THAT ALL ACCUSED ARE CO-EMPLOYEES AND WORKING IN ONE COMPANY^[12] (Underscoring supplied)

From the evidence for the prosecution, the following version is gathered:

Petitioners were hired by Western, a chain of appliance stores, as salespersons at its branch at P. Tuazon Boulevard in Cubao, Quezon City. Benitez and Flormarie were hired as floor manager and service-in-charge/cashier-reliever, respectively, at the same branch of Western.^[13]

On February 21, 1996, in the course of preparing the January monthly sales report of the P. Tuason branch of Western, Branch Accountant Marlon Camilo (Camilo) noticed that the computer printout of the monthly sales report revealed a belated entry for Cash Sales Invoice No. 128366. Upon verification from Western's head office, Camilo learned that the branch received the booklet containing 50 cash sales invoices to which Invoice No. 128366 formed part.

Camilo then confirmed that the booklet of sales invoices bearing numbers 128351 up to 128400 was missing. And he noted that the daily cash collection report did not reflect any remittance of payments from the transactions covered by the said invoices.

Some cash sales invoices were later recovered. From recovered Invoice No. 128366, Camilo found out that Flormarie was the one who filled it up and received the payment reflected therein.

From recovered Invoice Nos. 128358 and 128375, Camilo found out that the goods covered thereby were missing. Concluding that the transactions under the said invoices were made but no payment was remitted to Western, Camilo reported the matter to Ma. Aurora Borja (Aurora), the branch assistant manager.

Benitez soon approached Camilo and requested him not to report the matter to the management, he cautioning that many would be involved.

Aurora and Camilo later met with Benitez, Filipina, cashiers Rita Lorenzo (Rita) and Norma Ricafort (Norma) during which Benitez and Filipina pleaded with Camilo not to report the matter to the management. Flormarie, who called on Camilo by telephone, made a similar plea as she admitted to stealing the missing booklet of invoices, she explaining that her father was sick and had to undergo medical operation, and offering to pay for the goods covered thereby.^[14]