

FIRST DIVISION

[G.R. No. 138954, November 25, 2004]

ASUNCION GALANG ROQUE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision of the Court of Appeals in CA-G.R. CR No. 20411, entitled "People of the Philippines vs. Asuncion Galang Roque," which affirmed *in toto* the decision of the Regional Trial Court (RTC) of Guagua, Pampanga, Branch 49, where petitioner was found guilty of the crime of qualified theft.

In an information dated December 3, 1990, the petitioner was charged with qualified theft in the Regional Trial Court of Guagua Pampanga, Branch 49. The Information reads as follows:

That on or about the 16th day of November, 1989, in the municipality of Floridablanca, province of Pampanga, Philippines and within the jurisdiction of his Honorable Court, the above-named accused ASUNCION GALANG ROQUE, being then employed as teller of the Basa Air Base Savings and Loan Association Inc. (BABSLA) with office address at Basa Air Base, Floridablanca, Pampanga, and as such was authorized and reposed with the responsibility to receive and collect capital contributions from its member/contributors of said corporation, and having collected and received in her capacity as teller of the BABSLA the sum of TEN THOUSAND PESOS (P10,000.00), said accused, with intent of gain, with grave abuse of confidence and without the knowledge and consent of said corporation, did then and there willfully, unlawfully and feloniously take, steal and carry away the amount of P10,000.00, Philippine currency, by making it appear that a certain depositor by the name of Antonio Salazar withdrew from his Savings Account No. 1359, when in truth and in fact said Antonio Salazar did not withdr[a]w the said amount of P10,000.00 to the damage and prejudice of BABSLA in the total amount of P10,000.00, Philippine currency.

All contrary to law.^[1]

The evidence of the prosecution consisted of the testimonies of three witnesses, namely: Antonio Salazar, Rosalina de Lazo and Reynaldo Manlulu and Exhibits A to G with submarkings.

The first prosecution witness, Antonio Salazar (Salazar) is a member/depositor of the Basa Air Base Savings and Loan Association Inc. (BABSLA) as evidenced by his

passbook No. 1359. He was made to sign two ledgers when he opened his savings account. On November 16, 1989, Salazar made a deposit of P2,000 at the BABSLA; however, he did not make any withdrawal, nor did he authorize anyone to do the same on that date or on November 17, 1989 or for the whole month of November of that year. Salazar disclosed that around July 1990 he heard that the funds of other depositors were missing inside the BABSLA and were supposedly clandestinely circulating around the base. Prodded by this news, and considering that the balance in his passbook was P46,000, he went to the BABSLA to withdraw P40,000, but was informed that his balance at the BABSLA was insufficient to cover the withdrawal. He was not allowed to withdraw. Rosalina de Lazo, the general manager, informed him that several withdrawals were made on his account amounting to P30,500, as evidenced by three (3) withdrawal slips. Included among these withdrawal slips is one with the amount of P10,000, dated November 16, 1989. Salazar claimed that the signature appearing on said withdrawal slip was not his signature. He does not personally know who made the withdrawal of P10,000. Salazar assumed that the one in control of the funds made the withdrawal.^[2]

The second prosecution witness was the general manager of the BABSLA in the person of Rosalina de Lazo (de Lazo). She has held her position as general manager since 1983. De Lazo averred that the BABSLA had only one teller, and that the petitioner, Asuncion Galang Roque, held that job from 1989 up to the last working day of June 1990. She added that the petitioner had not been absent from work, particularly in 1989. Sometime in July 1990, she met MSgt. Antonio Salazar, who was complaining that the amount of P30,500 was missing from his account. A comparison of the bank's ledger and his passbook manifested that there were three (3) withdrawals appearing on the ledger that do not appear in his passbook, inclusive of the withdrawal made on November 16, 1989. She saw the three (3) withdrawal slips and in the withdrawal slip dated November 16, 1989 the initial after the figure 11-17-89 is the customary initial of the petitioner. She claimed that she was familiar with the customary initial of the petitioner. The withdrawal slip dated November 16, 1989 was made after 3:00 o'clock in the afternoon of the same day but was stamped 11-17-89, as it is bank regulation that all transactions made after 3:00 p.m. will be entered in the book the next day.

De Lazo further testified that at the commencement of the business hour, petitioner gets cash from the treasurer and her beginning cash on November 17, 1989 per Teller's Daily Report was P355,984.53 which she used to serve all kinds of transactions pertaining to withdrawals. The initial over the typewritten name "agroque" is the customary initial of the petitioner, Asuncion Galang Roque. De Lazo claimed to be familiar with it. At the end of the work day petitioner prepared the Abstract of Payment, which is a summary of the withdrawals the teller paid that day as evidenced by several withdrawal slips.

De Lazo testified that before the petitioner went on forced leave petitioner sought her assistance because she feared she would be removed from work. She claimed that petitioner admitted to taking some money from the depositors, including the account of Sgt. Salazar. Unable to help petitioner, she referred her to Col. Dunilayan, the president and chairman of the BABSLA, who told her to return the money immediately. Petitioner told Col. Dunilayan that she would return the money. She failed to do so. During the same meeting, petitioner, in the presence of Col. Dunilayan and de Lazo, prepared a list containing the names of members from whose accounts she took money. Petitioner gave the list to Col. Dunilayan. When

petitioner failed to return the money they decided to file a case against her. In the morning of November 17, de Lazo was already aware of the taking of the P10,000 that occurred the day prior. Since she had full trust and confidence in petitioner, and did not fear that this anomaly would persist, she did not ask for the presentation of the passbook so that the corresponding entries could be made in order to avoid a discrepancy between the ledger and the passbook, nor did she send notice to Antonio Salazar. It is the practice of the bank that all withdrawals require the presentation of the passbook. This was the first instance that a transaction was not recorded in the passbook. There are only a few cases wherein she (de Lazo) allows deposits to be made without the presentation of the passbook on the same day. In these instances she just requires the depositor to come some other time for the recording of the transaction in the passbook. As of the date of this testimony, the BABSLA had already paid deposits on accounts from which the petitioner had taken money, including that of Antonio Salazar as indicated in the bank records.^[3]

The third and last prosecution witness is Reynaldo Manlulu, who is both the treasurer and a member of the board of directors of the BABSLA. He testified that petitioner was the teller of the BABSLA in November 1989 and that she reported for work on the 17th of that month. He intimated that on that date petitioner got a beginning cash from him amounting to P355,984.53, including all the the transactions that occurred after 3:00 p.m. of the preceding day. This beginning cash can be seen in the Teller's Daily Report. The signature above the typewritten name "agroque" is petitioner's because she signed it in his presence. Apart from the beginning cash, he also turned over to petitioner the transactions that took place after 3:00 p.m. of the preceding day, particularly the withdrawal slip of MSgt. Salazar. At the end of the business day of November 17, 1989, she prepared an abstract of payment and in this abstract the initial over the typewritten name "agroque" is the initial of the petitioner because she signed it in his presence. Petitioner paid the withdrawal of P16,300 evidenced by the withdrawal slips attached to the abstract of payment. After she prepared the abstract of payment, petitioner turned over to him the cash and all the transactions that were taken after 3:00 p.m. A Cash Count shows the total cash that petitioner turned over to him. The initial over the typewritten name "agroque" is petitioner's because it was signed in his presence.^[4]

The evidence for the petitioner consists of the testimony of the petitioner herself and that of Atty. Norbin Dimalanta and Exhibits 1 to 5 with sub-markings.

Petitioner, Asuncion Galang Roque, testified that she was employed as teller at the BABSLA from 1979 until her termination in 1990. In the morning she gets the money from the treasurer and they do a cash count which is reflected in the Teller's Daily Report and at 3:00 p.m. she prepares and submits an abstract of payment. However, before making the abstract, she and the treasurer conduct a cash count and the remaining cash is turned over to the treasurer. As a teller, she received deposits and payments, deposits of checks and payments of loans. She does not discharge any memorandum or withdrawals unless both the manager and the treasurer previously approve it. Depositors cannot withdraw after 3:00 p.m., unless they talk to the manager or treasurer. Withdrawals done after 3:00 p.m. are reflected as transactions of the following day. She insisted that the charge against her of stealing and carrying away P10,000 is false since she did not prepare the withdrawal slip dated November 16, 1989 which involves the account of Antonio

Salazar. She also denied forging the signature of Salazar and affixing her initial. Petitioner also disowned the initial in the abstract of payment dated November 17, 1989 and the initials on several withdrawal slips. She claimed to be innocent and contended that Rosalina de Lazo is the one who is guilty because she was only used by the president. The latter is still connected with the BABSLA while the petitioner was terminated in June 1990.

Throughout the eleven years that petitioner worked as a teller at the BABSLA, she had never been absent from work or required by the treasurer to explain any discrepancy or anomaly related to the cash that she handled as a teller. Before her dismissal, petitioner was not suspended by the board of directors of the BABSLA during the investigation of her case. She was put on forced leave which eventually led to her termination. The manager was also supposed to be on forced leave.

However, when the manager reported for work and some members protested and filed a petition, the president asked them to retract their statements by means of executing an affidavit of desistance. Even though petitioner received notice regarding the investigation, she did not attend because she knew the personalities of the members of the committee. Only the accused and the complainants whose accounts were withdrawn were investigated. She filed a complaint with the Department of Labor in connection with her dismissal but it was dismissed because she did not pursue it. Apart from the president, there were seven (7) members of the board of directors of the BABSLA in 1990: Col. Dunilayan, Col. Sanchez, MSgt. Romero, Sgt. Manlulu, Sgt. Torato, Mrs. Bagasbas and Capt. Baluyut. Capt. Baluyut was subsequently dismissed as a member of the board of directors.^[5]

The second witness for the petitioner was Atty. Norbin Dimalanta. He averred that he only gave advice regarding the legality of the possible dismissal of the petitioner based on the evidence the committee gathered. He was present when the evidence and witnesses were presented. Proper notices were sent to the accused. The chairman of the committee, Leonardo Tolentino, concluded that the initials on the withdrawal slips were similar to the petitioner's initials. He did not suggest the consultation of a handwriting expert on forgery since there were other pieces of evidence showing that the petitioner figured in the anomaly because several witnesses identified the figures appearing in the original copy of the questioned receipt as written by the petitioner. His conclusion that no one else could have done it except for Mrs. Roque was arrived at only after the investigation of the records and documents presented to the committee.^[6]

The RTC found the petitioner guilty beyond reasonable doubt of the crime charged, on the following grounds:

After a careful evaluation of the evidence presented by both sides, the Court finds that the prosecution has proved the guilt of the accused beyond reasonable doubt. This finding is supported by the categorical testimony of prosecution witness Reynaldo Manlulu who testified that on November 17, 1989 accused received from him a beginning cash in the amount of P355,984.53 which is shown in a Teller's Daily Report (Exh. D) prepared by the accused and signed by the accused in his presence (TSN, March 25, 1993, page 3). At the close of business day of November 17, 1989 the accused also prepared an Abstract of Payment (Exh. E) and she signed it in his presence (*Id.*, page 6). Aside from the beginning cash he also turned over to the accused the transactions that took place

after 3:00 o'clock of the preceding day particularly the withdrawal slip of M/Sgt. Salazar (*Id.*, page 4) so that it can be entered on the records on that very date as bank regulation requires that transactions occurring after 3:00 o'clock of a particular day are recorded the following day. This explains why although the questionable withdrawal slip was dated November 16, 1989 it was stamped paid on November 17, 1989, for record purposes. Since it was the accused who gave Reynaldo Manlulu the withdrawal slip dated November 16, 1989 the presumption is that, being in possession of said withdrawal slip before its delivery to Reynaldo Manlulu, the accused is the one who prepared the said withdrawal slip. This particular transaction was turned over to him by the accused the previous day (*Id.*, page 5).

The Teller's Daily Report dated November 17, 1989 reflects, among others, a total withdrawal on that date in the amount of P16,300.00. This amount is the totality of withdrawal after adding the seven (7) legitimate withdrawals amounting to P6,300.00 (Exhs. E-2 to E-8) and the questionable withdrawal of P10,000.00 (Exh. C). On the other hand, the Abstract of Payment (Exh. E) reflects, among others, a savings withdrawal of P16,300.00 which tallies with the Teller's Daily Report of that date and with the seven (7) withdrawal slips.

The defense interposed by the accused is one of denial. She claimed that all the initials in the withdrawal slip of P10,000.00 (Exh. C), on the Teller's Daily Report (Exh. D), in the Abstract of Payment (Exh. E) as well as on the list of names of depositors (Exh. G) are not hers, implying, therefore, that these documents were prepared by somebody else. To emphasize that the initials on Exhibits C, D, E, and G are not hers, accused during the hearing on March 18, 1993 wrote six (6) of her initials in a piece of paper (Exh. "1"). However, the Court is not in a position to state whether the initial in Exhibit 1 is the same or different from the initials in Exhibits C, D, E, and G not being an expert along that line. Accused could have very well availed of court processes to request the NBI or PNP Crime Laboratory to determine whether or not the initials in Exhibits C, D, E, and G are hers by comparing the same with similar documents on file with the BABSILA which are abundant as said documents are prepared daily and accused was, prior to her dismissal, the only teller of BABSILA for over a year and has therefore accomplished a lot of these documents. Unfortunately, accused did not make any attempt to do so. At any rate, denial cannot prevail over the affirmative and categorical testimony of Reynaldo Manlulu who stated that accused turned over to him the questionable withdrawal slip on November 16, 1989 and it was in turn returned to the accused by said witness the following day November 17, 1989 in order that said transaction may be reflected on the records on that date. Said witness also positively testified that the accused initialed in his presence the Teller's Daily Report and the Abstract of Payment which said accused prepared on November 17, 1989. Denial is a self-serving negative evidence that cannot be given greater weight than the declaration of credible witnesses who testified on affirmative matters (*People vs. Carizo*, 233 SCRA 687). Like alibi, denial is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses (*People vs. Macagaleng*,