

SECOND DIVISION

[G.R. No. 109242, January 26, 1999]

**LITO C. MARCELO, PETITIONER, VS. THE HON. SANDIGANBAYAN
(FIRST DIVISION) AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari filed by Lito Marcelo from a decision of the Sandiganbayan (First Division)^[1] convicting him and two others of qualified theft. The information against them alleges —

That on or about February 17, 1989, in the Municipality of Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused, ARNOLD PASICOLAN, a public officer, being then an Emergency Laborer assigned as bag opener at the printed matters section of Makati Central Post Office, and taking advantage of his official position by having access to the mail matters in conspiracy with accused RONNIE S. ROMERO and LITO MARCELO, both private individuals, did then and there wilfully, unlawfully and feloniously with grave abuse of confidence, and with intent of gain and without the consent of the owners thereof, take, steal and carry away from the Central Post office of Makati one bag containing assorted mail matters some of them containing U.S. Dollar Bills in the aggregate amount of \$500, or its peso equivalent in the amount of P11,000.00, Philippine Currency, to the damage and prejudice of the different addressee (sic) or the government in the aforesaid mentioned (sic) amount.

CONTRARY TO LAW.

The facts established during the trial show the following:

On February 10, 1989, Jacinto Merete, a letter carrier in the Makati Central Post Office, disclosed to his chief, Projecto Tumagan, the existence of a group responsible for the pilferage of mail matter in the post office.^[2] Among those mentioned by Merete were Arnold Pasicolan, an emergency laborer assigned as a bag opener in the Printed Matters Section, and Redentor Aguinaldo, a mail sorter of the Makati Post Office. Merete likewise described the modus operandi of the group.

For this reason, Tumagan sought the aid of the National Bureau of Investigation (NBI) in apprehending the group responsible for mail pilferage in the Makati Post Office.

On February 17, 1989, NBI Director Salvador Ranin dispatched NBI agents to

Legaspi Village following a report that the group would stage a theft of mail matter on that day. Tumagan accompanied a team of NBI agents composed of Senior Agent Arles Vela and two other agents in a private car. They arrived at Legaspi Village at about 1:00 p.m. They stayed at the corner of Adelantado and Gamboa Streets, while two other teams of NBI agents waited at Amorsolo Street, near the Esguerra Building.^[3]

At 2:00 p.m., a postal delivery jeep, driven by one Henry Orindai, was parked in front of the Esguerra Building on Adelantado Street.^[4] Esguerra Building is located between Adelantado and Amorsolo Streets. Adelantado and Amorsolo Streets are parallel to each other. The passengers of the postal delivery jeep were Arnold Pasicolan, Jacinto Merete, and the driver, Henry Orindai.^[5] Pasicolan alighted from the jeep bringing with him a mail bag. Merete stayed inside the jeep. Pasicolan then passed through an alley between Esguerra and Montepino Buildings going towards Amorsolo St.^[6] Montepino Building is adjacent to Esguerra Building. The two are separated by the alley. Upon reaching Amorsolo St., Pasicolan gave the mail bag to two persons, who were later identified as Ronnie Romero and petitioner Lito Marcelo. The latter transferred the contents of the mail bag (i.e., assorted mail matter) to a travelling bag. The two then secured the bag to the back of their motorcycle.^[7]

Meanwhile, the NBI team led by agent Vela, upon seeing Pasicolan going towards Amorsolo St., moved their car and started towards Amorsolo St. They were just in time to see Pasicolan handing over the mail bag to Marcelo and Romero.^[8] At that point, Atty. Sacaguig and Arles Vela arrested the two accused.

Unaware of the arrest of Romero and Marcelo, Pasicolan went back to the postal delivery jeep and proceeded toward Pasay Road. The NBI agents followed the postal delivery jeep, overtook it, and arrested Pasicolan.^[9]

The NBI agents brought Pasicolan, Marcelo, and Romero to their headquarters. They also brought along with them the motorcycle of Romero and Marcelo and the bag of unsorted mail found in their possession.^[10] On their way to the NBI headquarters, they passed by the Makati Central Post Office, intending to arrest another suspect, Redentor Aguinaldo. However, they were not able to find him there.^[11]

The unsorted mail seized from Marcelo and Romero consisted of 622 letters.^[12] The names of the addressees were listed. They were subsequently notified by the Bureau of Posts to claim their letters. Many of them, after proper identification, were able to claim their letters. Some letters contained money.

Romero, Marcelo, and Pasicolan were asked to affix their signatures on the envelopes of the letters. They did so in the presence of the members of the NBI Administrative and Investigative Staff and the people transacting business with the NBI at that time. According to Director Ranin, they required the accused to do this in order to identify the letters as the very same letters confiscated from them.^[13]

NBI Director Ranin allegedly saw US dollar bills in various denominations of 20, 50, and 100 dollars.^[14] Vela and the other NBI agents stated in their affidavits that

there were dollar bills in the letters which, if converted to Philippine pesos, at the then exchange rate of P22 to US \$1, were worth P11,000.00.^[15] The addressees agreed to leave the envelopes of the letters with the NBI. Those letters which were not claimed were opened in court in the presence of the counsel for the defense. The letters were found to contain three (3) one dollar bills, one (1) five dollar bill, one (1) twenty dollar bill, a check for twenty-five dollars, and fifty (50) Saudi Arabian riyals.^[16]

Arnold Pasicolan, Ronnie Romero, and herein petitioner Lito Marcelo were charged with infidelity in the custody of documents. The case was later withdrawn and another information for qualified theft was filed before the Sandiganbayan.

On March 8, 1993, the Sandiganbayan found all the accused guilty beyond reasonable doubt as principals of the crime of qualified theft. The dispositive portion of its decision reads:

WHEREFORE, the Court finds the three accused, Arnold Pasicolan y Mabazza, Ronnie Romero y Santos, and Lito Mercado [should be Marcelo] y Cruz, guilty, as principals, beyond reasonable doubt of the crime of qualified theft defined in Article 310, in conjunction with Articles 308 and 309, of the Revised Penal Code. Accordingly, applying the Indeterminate Sentence Law and considering the aggravating circumstances of taking advantage of public position, the Court imposes upon Arnold Pasicolan y Mabazza the penalty ranging from EIGHT (8) years, EIGHT (8) months, and ONE (1) day of Prision mayor, as minimum, to THIRTEEN (13) YEARS, ONE (1) month, and ELEVEN (11) days of reclusion temporal, as maximum. Applying again the Indeterminate Sentence Law and there being no aggravating nor mitigating circumstances, the Court imposes upon Ronnie Romero y Santos and Lito Marcelo y Cruz, the penalty ranging from SEVEN (7) YEARS, four (4) months, and ONE (1) day of prision mayor, as minimum, to eleven (11) years, SIX (6) months, and TWENTY-ONE (21) days of prision mayor, as maximum.

Hence, the instant petition for review on certiorari based on the following assignment of errors:

- (1) Respondent Honorable Court had wrongly made the crucial finding against petitioner that he has committed the act charged in conspiracy with each other.
- (2) Respondent Honorable Court erred in admitting as evidence of petitioner's guilt the letters signed by the accused during custodial investigation without the assistance of counsel, in utter disregard of his constitutional right.

First. Petitioner says that since the subject of the alleged pilferage was mail matter, only a government employee may be held guilty of qualified theft unless a private individual was shown to have been in conspiracy with him. He contends that since he is not a government employee, then he cannot be charged or held guilty of the crime as there is no proof that he conspired with a postal employee. The petitioner argues that there is no evidence to prove that he was at any time in conspiracy

with the members of the syndicate inside the post office. In fact, petitioner points out, Jacinto Merete, Projecto Tumagan, and his co-accused Arnold Pasicolan were one in saying that it was their first time to see him and Romero on February 17, 1989. Likewise, in the meeting allegedly conducted by the members of the syndicate, he and Romero were not around nor were their names mentioned. Petitioner says that although he and Romero knew each other, it was only on February 17, 1989 that they saw each other again in order to see a movie.

We cannot understand petitioner's theory that, as the subject of the pilferage was mail matter, only a government employee, presumably of the postal service, can be held liable of qualified theft. What makes the theft of mail matter qualified is the fact that the subject thereof is mail matter, regardless of whether the offender is a postal employee or a private individual. This much is clear from Art. 310 of the Revised Penal Code which provides:

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.

Thus, as long as the thing stolen is one of those enumerated in Art. 310, the crime is qualified theft. In this case, it is mail matter. Hence, it is not necessary that petitioner be shown to have been in conspiracy with a government employee in order to hold him liable for qualified theft.

Be that as it may, conspiracy was proven in this case. NBI agent Arles Vela testified that petitioner was instrumental in transferring the contents of the mail bag which Pasicolan handed to them to their travelling bag and that afterward petitioner and his co-accused Romero tied the bag to their motorcycle.

Vela's testimony was corroborated by Projecto Tumagan, who likewise testified that Romero and Marcelo transferred the contents of the mail bag to their bags. Although Tumagan said petitioner and Romero had two bags, thus contradicting Vela's testimony that petitioner and his co-accused had only one bag, the inconsistency in the testimonies of these two prosecution witnesses is not really of much importance. What is important is that Tumagan corroborated Vela's testimony that petitioner helped in putting the letters in their bag. The discrepancy could be due to the fact that these two witnesses were inside a car and were at some distance from the persons they were observing. At any rate, during the cross-examination, Tumagan said that the contents of the mail bag were transferred to one "other bag" — implying that there was really just one bag involved.^[17] Moreover, the defense should have confronted Tumagan with this inconsistency and asked him to explain. For its failure to do so, the defense cannot for the first time raise the point in this appeal.

Petitioner Marcelo showed no sign of surprise or hesitation when Pasicolan handed the mail bag to him and Romero. It was apparent he was acting pursuant to a prior agreement because when the mail bag was given to him, he got the bag and he and

Romero then transferred its contents to their travelling bag. Petitioner acted in concert with Pasicolan and Romero, thus indicating he was in conspiracy with them. As the Sandiganbayan said:

The accused appear to have committed the acts charged in conspiracy with each other pursuant to a pre-conceived plan known to all of them to attain a common goal. Thus, when the postal delivery jeep stopped near Esguerra Building along Adelantado Street, Pasicolan alighted bringing with him a mail bag, passed through an alley beside Esguerra Building, and upon reaching Amorsolo Street handed over the mail bag to Romero and Marcelo who were waiting for him. Upon receiving the mail bag they quickly opened it and transferred its contents to a bag which Aguinaldo provided for the purpose. No words were exchanged between Pasicolan, on the other hand, and Romero and Marcelo, on the other, in effecting the delivery. Pasicolan did not ask if Romero and/or Marcelo were the person or persons sent to receive the mail bag. These facts indicate that the three accused already knew each other and were fully aware of what each had to do. And when Romero and Marcelo were arrested for receiving the mail bag, they said nothing to the NBI. Not even a whimper of protest was heard from them. They appear resigned to their fate after having been caught red-handed.

Petitioner Marcelo claimed that he and Romero met on February 17, 1989 in order to see a movie; that when Pasicolan handed four envelopes to Romero, he was across the street buying cigarettes; and that when he joined Romero, a person identifying himself as an NBI agent arrested them. Marcelo testified:^[18]

ATTY. CRUZ

Q So you were asked by Ronnie Romero if you will be reporting for work at that time?

A Yes, sir.

JUSTICE HERMOSISIMA

Q What time was this when you were asked by Ronnie Romero?

A 1:00 o'clock in the afternoon.

ATTY. CRUZ

Q What was the reason why you were asked by Ronnie Romero?

A He wanted me to go with him to see a movie.

Q Did he tell you at what place you will see a movie?

A No, sir.

Q What was your reply?

A I told him "yes, I will go with you, anyway I have to go to my work at 10:00 o'clock in the evening."

. . . .

Q What happened next Mr. Marcelo?

A Then I rode at the back of his motorcycle and we went straight to Makati. Suddenly we stopped near a building and I asked him what we will do there and he told me he was going to wait for somebody there.