

NINTH DIVISION

[CA-G.R. CR-HC No. 06189, March 16, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO B. GALERA, ACCUSED-APPELLANT.**

DECISION

PAREDES, J.:

THE CASE

THIS APPEAL, filed by accused-appellant Ernesto B. Galera (appellant), seeks to reverse and set aside the Joint Decision^[1] dated December 17, 2012 of the Regional Trial Court of San Fernando City, La Union, Branch 29, in Criminal Case Nos. 7666 to 7671, the dispositive portion of which reads:

WHEREFORE, premises considered, the court finds accused ERNESTO GALERA, **GUILTY** of six (6) counts of Qualified Theft and sentences him to serve 6 penalties of Reclusion Perpetua. Art. 70 of the RPC on successive service of sentences shall, however, apply to him. Art. 70 provides among others that: Such maximum period shall in no case exceed forty years, hence, he shall suffer the penalty of imprisonment for a period not exceeding 40 years. He is likewise ordered to pay the amounts of P1,284,610.82 and \$2,178.00 to the private complainant, RCBC.

SO ORDERED.

PROMULGATED in open Court this 17th day of December, 2012 at the City of San Fernando, La Union, Philippines.^[2]

THE ANTECEDENTS

In Criminal Case No. 7666, appellant was charged with *Qualified Theft*, committed as follows:

That on or about the 22nd day of January 2003, in the City of San Fernando, Province of La Union, and within the jurisdiction of this Honorable Court, the above-named accused, with grave abuse of confidence, being then the Business Center Manager of RIZAL COMMERCIAL BANKING CORPORATION (RCBC), San Fernando City, La Union Branch and with intent to gain, did then and there willfully, unlawfully and feomiously take, steal and carry away, by withdrawing from the Special Savings Account of Rosita Villa in the said bank, the amount of TWO THOUSAND U.S. DOLLARS (\$2,000.00) or ONE HUNDRED EIGHT THOUSAND PESOS (P108,000.00), without the

knowledge and consent of RIZAL COMMERCIAL BANKING CORPORATION and ROSITA VILLA, to the damage and prejudice of RIZAL COMMERCIAL BANKING CORPORATION, which was constrained to reimburse the amount of TWO THOUSAND U.S. DOLLARS (\$2,000.00) or ONE HUNDRED EIGHT THOUSAND PESOS (P108,000.00), to the aforementioned account Rosita Villa.

CONTRARY TO LAW.^[3]

In Criminal Case Nos. 7667 to 7671, appellant was also charged with *Qualified Theft* in similarly worded Informations as above in Criminal Case No. 7666, except as to the date of the incidents and amounts involved, viz:

Crim. Case No.	Date of Incident	Amount Involved
7667	May 14, 2002	P200,000.00
7668	April 17, 2002	P200,000.00
7669	May 24, 2002	P300,000.00
7670	July 18, 2002	P250,000.00
7671	August 6, 2002	P102,233.84 ^[4]

On July 12, 2007, appellant was arraigned and, with the assistance of counsel, entered a plea of "Not Guilty."^[5]

At the pre-trial held on August 23, 2007, the trial court noted the consolidation of the cases; and the parties stipulated on the following:

- "1. Accused admits that he is the same person named in the Information;
2. That the Court has jurisdiction over these cases;
3. That accused was the Business Center Manager of RCBC, San Fernando City, La Union from March 1, 1995 to October 19, 2003 and was later appointed as Business Center Manager of RCBC, Laoag City, Ilocos Norte;
4. That Rosita Villa maintained a Special Savings Account at RCBC, La Union;
5. That accused entered into an agreement dated June 25, 2005 for him to pay Rosita Villa the amount of P1,195,573.06 on or before December 30, 2005;
6. That accused has not paid Rosita Villa."^[6]

Another pre-trial was held on September 11, 2007, where the parties stipulated:

- "1. Accused admits that he is the same person named in the Information;
2. That the Court has jurisdiction over these cases;
3. That accused was the Business Center Manager of RCBC, San Fernando City, La Union from March 1, 1995 to October 19, 2003 and

was later appointed as Business Center Manager of RCBC, Laoag City, Ilocos Norte;

4. That Rosita Villa maintained a Special Savings Account at RCBC, La Union;

5. Accused admits that Rosita Villa had a U.S. Time Deposit with the RCBC, San Fernando City as evidenced by Exhibit "C" in the amount of \$3,100.00 and Exhibit "D" in the amount of \$16,743.90;

6. Accused admits that Rosita Villa maintained a Special Savings Account Trading Order No. 07320009523-002 with the RCBC, San Fernando City as evidenced by Exhibit "A" for the amount of P8444,307.04 (*sic*) and Special Savings Account Trading Order No. 07320009523-003 as evidenced by Exhibit "B" for the amount of P200,000.00;

7. That accused entered into an agreement dated June 25, 2005 for him to pay Rosita Villa the amount of P1,195,573.06 on or before December 30, 2005;

8. That accused has not paid Rosita Villa."^[7]

Evidence for the PROSECUTION

The prosecution presented the testimonies of: Joseph Ancheta (Ancheta)^[8]; Clint Ang (Ang)^[9]; Lyn Rimando (Rimando)^[10]; Richard Cayago (Cayago)^[11]; Jean Sarmento (Sarmiento)^[12]; Rosita Villa (Villa)^[13]; Evelyn Villa Sazon (Sazon)^[14]; Priscilla Cabanban (Cabanban)^[15]; and, as rebuttal witness, Juliana Santiago (Santiago)^[16], a document examiner for the National Bureau of Investigation. The prosecution witnesses' combined testimonies tends to establish, that:

Appellant and Villa are distant relatives, as appellant's wife is Villa's niece. Appellant was the business center manager of RCBC-San Fernando City, La Union Branch (the bank) where Villa maintained a Peso Special Savings Account and two (2) Foreign Currency Deposit Unit Time Deposit (FTD) accounts. Sometime in June 2005, Villa went to the bank to update her accounts but she was surprised to discover that her special savings account was already closed while a withdrawal had been made from her FTD account. She conferred with Ancheta, the bank branch manager at that time as appellant had been transferred to RCBC-Laoag Branch. Ancheta called appellant who said that he will talk personally to Villa.

On June 25, 2005, appellant, Villa and Ancheta met in a restaurant at San Fernando City, La Union. There, appellant admitted to having withdrawn from Villa's accounts. He managed to do so by presenting alleged pre-signed withdrawal slips to the personnel of the bank. On the same day, Villa and appellant executed an Agreement^[17] wherein appellant promised to pay Villa the amount of P1,195,573.06 on or before December 30, 2005.

Despite the afore-mentioned Agreement, Ancheta initiated an investigation into the withdrawals of Villa's accounts. In the course of the investigation, RCBC found that Villa's signatures in the withdrawal slips appeared to be forgeries. Consequently,

appellant was placed on preventive suspension and, subsequently, was terminated from employment on October 28, 2005. Appellant failed to pay Villa, thus, RCBC was constrained to pay her P1,284,610.82 through Manager's Check No. 0000001589^[18] and US \$2,178.22 through Check No. 0000019976^[19], based on the principal amount of the deposit accounts and the prevailing interest at the time the monies were withdrawn. Villa then executed and signed a Release Waiver and Quitclaim dated January 29, 2007^[20]. Hence, the filing of these Informations.

On rebuttal, the prosecution presented Santiago, NBI document examiner. After examining the withdrawal slips and Villa's documents, among others, her passport, signature card, and checks, Santiago concluded that the signatures in the withdrawal slips were forged and, in connection with such finding, executed Questioned Documents Report No. 26-109^[21].

Evidence for the DEFENSE

Appellant was the lone witness^[22] for the defense, narrating that he and Villa are distant relatives. Villa has been appellant's client since 1993 when he was then employed in another bank. When he transferred to RCBC-San Fernando City, La Union in 1995, Villa also transferred her deposits there.

Sometime in July 1999, appellant and Villa talked about purchasing a parcel of land. In this regard, sometime in 2000, appellant wrote Villa, who was then residing in California, U.S.A., to sign five (5) withdrawal slips which he had enclosed in his letter^[23]. Villa signed the withdrawal slips and mailed them back to appellant together with an authorization giving him permission to withdraw money. In this manner, appellant was able to withdraw money from Villa's accounts. Appellant used the money to purchase a 750 square meter lot in Panicsican, San Juan, La Union. However, appellant registered the lot in his name because Villa was an American citizen and could not own real estate in the Philippines.

Sometime in April 2005, appellant and Villa met. Villa said that while she appreciated the investment, she was no longer interested in the lot so she requested appellant to sell it; appellant was unable to sell the lot.

On June 25, 2005, appellant met with Villa and Ancheta. During the meeting, appellant and Villa executed an Agreement whereby appellant promised to pay Villa, on or before December 30, 2005, the amount he withdrew from her accounts since he was planning to retire from RCBC on July 31, 2005. However, appellant was unable to retire and get his monetary benefits as he was preventively suspended on July 7, 2005 and subsequently terminated from employment on October 28, 2005.

After trial, the court *a quo* issued the assailed Joint Decision finding the appellant guilty of six (6) counts of *Qualified Theft*.

Aggrieved, appellant filed a motion^[24] for reconsideration and a motion^[25] to admit the affidavit of recantation of Rosita Villa; both pleadings were denied by the trial court in its February 19, 2013 Order^[26].

Appellant also filed a motion^[27] for new trial on the ground of newly discovered

evidence, namely, Villa's affidavit of recantation, the sworn statement of Milagros Marzo, Villa's helper, stating that the latter has dementia or Alzheimer's disease, and Villa's birth certificate which would prove that she was 80 years old when she testified, arguing that these pieces of evidence prove that Villa had forgotten that she had, indeed, signed the withdrawal slips sent by the appellant.

In its Order^[28] dated April 24, 2013, the trial court denied appellant's motion for new trial.

Hence, this appeal.

THE ISSUES

I. Whether or not the Trial Court committed reversible error in convicting the accused of Qualified Theft.

II. Whether or not the Trial Court committed reversible error in convicting the accused lacking of proof beyond reasonable doubt that which is required in a criminal proceeding.

III. Whether or not the Trial Court committed reversible error in denying the Motion for New Trial on the ground of newly discovered evidence.^[29]

THE COURT'S RULING

The appeal is without merit.

Appellant assails his conviction for *Qualified Theft*, contending: that the trial court failed to appreciate that Villa consented to the withdrawals; that the prosecution failed to prove that he used his position as Bank Manager in effecting the withdrawals; that the trial court erred in relying on the findings of the NBI handwriting expert who has been in practice for only five (5) years; and that, in denying his motion for new trial based on newly discovered evidence, the trial court gravely erred in failing to appreciate that the evidence tended to show that Villa was not in the right state of mind when she signed the withdrawal slips and when she testified.

We are not persuaded.

Appellant claims that Villa gave him authority to withdraw money, arguing that Villa gave her consent thereto, which consent can be inferred when he and Villa executed the Agreement on June 25, 2005, wherein he obliged himself to repay the money he withdrew. On the other hand, Villa categorically denied that she authorized the withdrawals.

It is axiomatic that one alleging a fact that is denied has the burden of proving it and, unless the party asserting the affirmative of an issue sustains the burden of proof of that issue by a preponderance of the evidence, his cause will not succeed^[30]. Thus, the defendant bears the burden of proof as to all affirmative defenses which he sets up in answer to the plaintiff's claim or cause of action; he being the party who asserts the truth of the matter he has alleged, the burden is