

# **TWENTIETH DIVISION**

**[ CA-G.R. CEB-CR NO. 02212, October 29, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUSA MALAGA, ACCUSED-APPELLANT.**

## **DECISION**

**HERNANDO, J.:**

This is an appeal filed by accused-appellant Jesusa Malaga seeking the reversal of the January 9, 2013 Decision<sup>[1]</sup> of the Regional Trial Court (RTC), Branch 23, of Iloilo City finding her guilty beyond reasonable doubt of the crime of Qualified Theft in Criminal Case No. 08-65800.

### **The Antecedents:**

On June 16, 2008, an Information<sup>[2]</sup> was filed charging accused-appellant with the crime of Qualified Theft, allegedly committed as follows:

That on or about the March 19, 2008, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, as employee of Supercare Shell Service Station owned by Carmen P. Santos, taking advantage of her position as in charge of "daily credit" or "bayad-utang" promotion extended by their service station and with the duty and obligation as such, to promote the sale of its products, and at the same time secure the inventory and money of the service station, with grave abuse of confidence and with intent to gain, did then and there willfully, unlawfully and, criminally fail to turn over to the service station the purchases made by the customer Mr. Leodevico Formacion in the amount of Php 16,740.00 covered by Charge Invoices No. 150583 and 148109, both dated March 19, 2008, but instead pocketed it for her personal use and benefit, to the damage and prejudice of the complainant Carmen P. Santos in the afore-mentioned amount of Php 16,740.00.

Contrary to law.

On July 31, 2008, accused-appellant was arraigned. She registered a negative plea of guilt at said arraignment. Thereafter, trial on the merits ensued. ]

The facts of the case according to the prosecution are summarized as follows:

Carmen P. Santos is the proprietor of Supercare Shell Service Station (Supercare)



and President of Iloilo Santos Truckers, Inc. (ISTI), a wholesale distributor of petroleum products. On the other hand, accused was a former and long-time employee of ISTI. However, sometime in 1996, she was assigned at Supercare to handle, among others, the *bayad-utang* or daily credit facility of said service station. The *bayad-utang* arrangement allows privileged customers to purchase their bulk orders on credit with the condition that they settle the same within 24 hours from the time of purchase. Moreover, said customers are entitled to a discount of sixty centavos per liter of fuel purchased.

On March 19, 2008, Leodevico Formacion, one of Supercare's privileged customers, purchased in two separate transactions a total of 440 liters of diesel fuel worth Php17,248.00. Initially, Formacion purchased 320 liters of fuel (worth Php12,544.00) which was covered by Invoice No. 148109. Subsequently, he procured additional liters of fuel (120 liters), worth Php4,704.00, which was covered by Invoice No. 150583.

Later that day, after deducting the fuel discount granted by Supercare, Formacion gave accused the amount of Php16,764.00 as payment for the fuel he purchased. Accused then acknowledged the payment with a receipt, which was handwritten on a one-eighth piece of yellow pad paper. The receipt reflected the amount of "Php16,764.00" and the date "3/19/08" as well as accused-appellant's signature. Unfortunately, Formacion's payment that day was not fully remitted by accused. Instead, only the amount of Php12,636.00 was remitted which accused allegedly applied to Formacion's unpaid purchases last January 17, 2008 and February 10, 2008.

On April 15, 2008, after the conduct of an audit and inventory, it was discovered that Formacion had several unpaid accounts totaling to around Php800,000.00. When Formacion was confronted with these unpaid balances, he asserted that he had faithfully paid all his purchases with Supercare. Thereafter, Formacion showed several handwritten receipts issued by accused, including the transaction dated March 19, 2008.

To exculpate herself from liability, accused interposed denial as her defense. She asserted that the amount paid by Formacion on March 19, 2008 was only Php12,636.00, which covered his purchases on January 17, 2008 and February 10, 2008. Accordingly, accused issued Charge Invoice Nos. 143829 and 140988 for said payments. Accused stressed that the one-eighth piece of yellow pad paper, dated March 19, 2008, which she gave to Formacion was not a receipt of payment but merely reflected his outstanding balance for the day less the fuel discount. Moreover, she contended that the instant criminal complaint is baseless and was only filed by Carmen P. Santos in order to gain leverage against her in the illegal dismissal case which she filed against her with the Department of Labor and Employment on April 17, 2008.

After trial, the court *a quo* found accused guilty for the crime charged as she deliberately failed to remit a portion of the payment made by Leodevico Formacion on March 19, 2008 to the damage and prejudice of Carmen P. Santos. The trial court found credible the testimony of Formacion concerning his payment of Php16,764.00. However, it ruled that accused should only be held liable for the amount of Php4,128.00 since she had already remitted the amount of Php12,636.00 to Santos as evidenced by Charge Invoice Nos. 143829 and 140988, the dispositive portion of



which reads:<sup>[3]</sup>

**WHEREFORE**, the prosecution having proven beyond reasonable doubt the guilt of the accused, but not in the amount of P16,764.00 as alleged in the Information, but only on a lesser amount, this Court finds the accused Jesusa Malga **GUILTY** as charged but only to the extent of the amount of P4,128.00 qualified by grave abuse of confidence, and applying the Indeterminate Sentence Law, sentences the accused to suffer an imprisonment ranging from **Four (4) Years and Two (2) Months of Prision Correccional** as the Minimum to **Six (6) Years and One (1) Day of Prision Mayor** as the Maximum.

The accused is further ordered to pay the complainant Carmen P. Santos the amount of P4,128.00 at the legal interest from March 20, 2008, until the amount is fully paid.

**SO ORDERED.**

Hence, the current appeal before Us by accused-appellant.

#### **The Issue:**

The main issue here is whether or not the trial court gravely erred in convicting the accused-appellant based on the evidence presented by the prosecution.

#### **The Court's Ruling**

*The appeal is impressed with merit.*

The elements of Qualified Theft committed with grave abuse of confidence are as follows:<sup>[4]</sup>

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;
6. That it be done with grave abuse of confidence.

Regarding the first element, which is the taking of personal property, the prosecution was not able to present direct evidence that appellant took Leodevico Formacion's payment, which was due to complainant Carmen P. Santos, on March 19, 2008. One of the pieces of evidence that the prosecution adduced and the trial court relied on heavily for the conviction was Formacion's testimony that he gave