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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 JUN 30 2016

Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 200081

Present:

VELASCO, JR., J.,
Chairperson,
 LEONARDO-DE CASTRO,*
 PERALTA,**
 PEREZ, and
 REYES, JJ.

- versus -

Promulgated:

EDGARDO T. CRUZ,
Accused-Appellant.

June 8, 2016

Wilfredo V. Lapitan

X ----- X

DECISION

PEREZ, J.:

Before us is an appeal from the Decision¹ of the Court of Appeals (CA) dated 29 April 2011 in CA-G.R. CR No. 32134 affirming the Decision² of the Regional Trial Court (RTC) of Pasig City, Branch 262 of Pateros, Metro Manila dated 27 May 2008 in Criminal Case No. 123851, entitled *People v. Cruz*, which found accused-appellant Edgardo T. Cruz guilty of the crime of Qualified Theft punishable under Article 310 of the Revised Penal Code and sentenced him to suffer the penalty of *reclusion perpetua*.

* Per Raffle dated 28 March 2016.

** On Official Leave.

¹ *Rollo*, pp. 2-17; penned by Associate Justice Franchito N. Diamante with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring. Justice Estela M. Perlas-Bernabe took part in the proceedings in the Court of Appeals, see also, *rollo*, p. 23.

² CA *rollo*, pp. 261-268; penned by Presiding Judge Isagani A. Geronimo.

Facts

Sometime in November 2000, private complainant Eduardo S. Carlos (Carlos) put up a business engaged in the sale of tires, batteries, and services for wheel alignment, wheel balancing and vulcanizing under the name and style of Chromax Marketing (Chromax).

During the infancy of Chromax, Carlos sought the help of accused-appellant Edgardo T. Cruz (Cruz) to register and manage the business, *i.e.*, attend to the needs of the customers, receive orders, issue receipts and accept payments, and to prepare daily sales report for Carlos to be able to monitor the number of sales made, credits given, and total amount collected.

When Chromax began to gain recognition, Carlos employed several other employees. However, despite the rise of number of clients they were servicing, Chromax's financial capital remained unimpressive. Thus, upon inquiry prompted by suspicion, Carlos discovered through his sister, Eliza Cruz, that Cruz was stealing from Chromax.

On 19 February 2002, Carlos, as part of his routine, checked the daily sales report containing the list of payments and balances of customers. Upon examination, he discovered that the remaining balance of their customers and Cruz's advances (*vale*) totaled to ₱97,984.00.³ At the bottom of the balance sheet⁴ was an acknowledgment that the amount stated as lost was actually used by Cruz, which reads, "Mr. Eddie Carlos (sic) Amount stated lost was actually used by me for my personal use and (sic) which I promise to pay you back."⁵

Upon further investigation, Carlos also discovered an irregularity in the receipts issued to services rendered to Miescor covering the same transaction with an invoice number 0287. The discrepancies were between the amounts as indicated in the receipt issued to Miescor and the receipt shown to him by Cruz. The receipt issued to Miescor indicated the amount of ₱1,259.00⁶ while the receipt shown to him by Cruz contained the amount of ₱579.00.⁷

Thus, on 18 July 2002, Carlos filed a criminal complaint for qualified theft against Cruz.

³ Exhibit "A-2", records, p. 110.

⁴ Sometimes referred to as ledger or daily sales report, which was written in a yellow piece of paper.

⁵ Exhibit "A-3", records, p. 110.

⁶ Exhibit "B", *id.* at 111.

⁷ Exhibit "C", *id.* at 112.

The Information

That, on or about the 19th day of February, 2002, or prior thereto, in the Municipality of Pateros, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then an employee of Chromax Marketing, enjoying the trust and confidence reposed upon him by his employer, with intent to gain, grave abuse of confidence and without the knowledge and consent of the owner thereof, did, then and there willfully, unlawfully and feloniously take, steal and carry away cash money amounting to Php97,984.00 representing sales proceeds of Chromax Marketing products and services, belonging to said Chromax Marketing owned by herein complainant Edgardo Carlos y Santos, to the damage and prejudice of the owner thereof in the aforesaid amount.

CONTRARY TO LAW.⁸

During arraignment, Cruz pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued. The prosecution presented two witnesses, namely: (1) Carlos, who testified that he knew Cruz two years before they set up Chromax and denied that he knew nothing about granting commissions to Miescor drivers; and (2) Keithly Cruz, who testified that as a cashier at Chromax, she saw Cruz hand a yellow piece of paper⁹ to Carlos, which she also saw was personally prepared by Cruz contrary to Cruz's allegation that the balance sheet as written in the yellow piece of paper was forged.¹⁰

On the other hand, the defense presented its sole witness, Cruz, who denied liability for qualified theft. He insinuated that Chromax started losing money from the time another employee, Jeffrey Albaitar (Albaitar), was employed. Moreover, with only few months since Albaitar was employed, Albaitar was already able to buy a brand new cellphone valued at ₱11,000.00. Finally, Cruz averred that his purported signature and declaration in the balance sheet that the missing collectible sum of money was allegedly used by him for personal use were forged.

Ruling of the RTC

On 27 May 2008, the RTC convicted Cruz finding him guilty beyond reasonable doubt of the crime of Qualified Theft in Criminal Case No. 123851.

⁸ Records, p. 1.

⁹ Also referred to as the daily sales report, ledger or balance sheet.

¹⁰ TSN, 29 October 2004.



The RTC opined that Cruz's admission of taking the amount stated as loss for his personal use is enough to sustain his conviction. The RTC, citing *People v. Mercado*,¹¹ held that "the declaration of the accused expressly acknowledging his guilt to the offense may be given in evidence against him, and any person otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard, if he understood it."

The RTC went on further stating that even without Cruz's extrajudicial admission, there is enough circumstantial evidence to uphold his conviction. The RTC ruled that the following circumstances were established by the prosecution which prove that it was only Cruz who had sales control and supervision of Chromax from receipt of payment, issuance of receipts, and credit collections:

1. [Cruz] is the manager and in-charge of cash purchase and sales of merchandise of Chromax Marketing.
2. Being the manager, he receives payments, issues receipts and handles credit collections of the company.
3. He likewise prepares daily sales reports.
4. Aside from [Cruz], who goes to work daily, Carlos and his immediate family have access to the cash register. However, they seldom go to Chromax Marketing except Carlos who visits 2 to 3 times a week.
5. [Cruz] cannot validly explain the shortages when confronted by Carlos. He just blamed Albaitar for a missing P100.00.¹²

Therefore, based on the pieces of evidence presented, the prosecution established "an unbroken chain leading to fair and reasonable conclusion that [Cruz] took the subject amount loss."¹³

The RTC rejected Cruz's allegation that Carlos authorized Cruz to grant commissions to Miescor's drivers. The RTC stated that assuming Carlos indeed authorized Cruz to give commissions, such authority is not a license to steal. The dispositive portion of the Decision of the RTC reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **EDGARDO T. CRUZ GUILTY** beyond

¹¹ 445 Phil. 813, 822 (2003).

¹² Records, p. 193.

¹³ Id.

reasonable doubt of the crime of Qualified Theft and sentencing him to suffer the penalty of *reclusion perpetua*. Further, accused is ordered to pay the private complainant in the amount of Php97,984.00 as actual damages.¹⁴

Ruling of the Court of Appeals

The CA affirmed the ruling of the RTC and found that all the elements of theft, together with the circumstances that led to the appreciation of the crime as qualified theft, were sufficiently established by the prosecution.

In the case at bar, Cruz was entrusted to receive payments, issue receipts, and oversee all aspects pertaining to cash purchases and sale of merchandise of the business. By taking advantage of and gravely abusing the trust and confidence of Carlos, Cruz was able to appropriate the proceeds of the missing amounts for his personal benefit.

What is glaring is Cruz failed to provide any justifiable reason as to why the collectible balance in the balance sheet could not be accounted for in spite of the undisputed fact that he was personally responsible for the accounting and safekeeping of the same.

The CA also took note that Cruz's categorical acknowledgment in the balance sheet that he used the amount of money for his personal benefit with a promise that the same will be paid, plus the fact that Cruz in open court, testified that aside from having personally prepared the balance sheet, he also acknowledged his personal responsibility therefor.

As regards the defense's contention that his conviction was merely based on circumstantial evidence, the CA ruled that, "[d]irect evidence is not the sole means of establishing guilt beyond reasonable doubt since circumstantial evidence, if sufficient, can supplant its absence. The crime charged may also be proved by circumstantial evidence, xxx."¹⁵

It is this submission that forms the basis of the present appeal the argument being that the CA erred in convicting Cruz on the basis of insufficient circumstantial evidence.

¹⁴ Id. at 194.

¹⁵ *Rollo*, p. 13.

Our Ruling

The appeal is bereft of merit.

Theft, as defined in Article 308 of the Revised Penal Code (RPC) provides:

Art. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.¹⁶

Based on the foregoing, the elements of the crime of theft are: (1) there was taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.¹⁷

However, when theft is committed with grave abuse of confidence, the crime appreciates into qualified theft punishable under Article 310 of the RPC, to wit:

Art. 310. *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 the plantation or fish taken from a fishpond or fishery, or if property is

¹⁶

Article 308, Revised Penal Code.

¹⁷

Valenzuela v. People, 552 Phil. 381, 415 (2007).

taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.¹⁸

Therefore, the elements of Qualified Theft committed with grave abuse of confidence are as follows:

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 owners consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and]
6. That it be done with grave abuse of confidence.¹⁹ (Emphasis omitted)

All the elements of Qualified Theft are present in this case.

First. The defense contends that the prosecution was not able to prove Cruz's guilt by direct evidence. The defense's contention is incorrect. The records reveal that it is by Cruz's own admission why a conviction can be sustained. As already stated, Cruz declared that he took the money for his personal use, "Mr. Eddie Carlos (sic) Amount stated lost was actually used by me for my personal use and (sic) which I promise to pay you back."²⁰

Nevertheless, even without Cruz's own admission and direct evidence proving Cruz's guilt, a conviction can still be sustained. As correctly held by the CA, direct evidence is not the sole means to establish guilt because the accused's guilt can be proven by circumstantial evidence.

Circumstantial evidence is defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue."²¹ Rule 133, Section 4 of the Revised Rules of Court provides for the requirements in order for circumstantial evidence can sustain conviction: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.²² Contrary to the defense's allegation that the pieces of circumstantial evidence presented were insufficient, a perusal of

¹⁸ Article 310, Revised Penal Code.

¹⁹ *People v. Mirto*, 675 Phil. 895, 906 (2011).

²⁰ Exhibit "A-3", rollo, p. 110.

²¹ *Bacolod v. People*, G.R. No. 206236, July 15, 2013, 701 SCRA 229, 234.

²² Rule 133, Section 4 of the Revised Rules of Court.

the records reveal otherwise. Based on the evidence, there is more than one circumstance which can prove Cruz's guilt.²³

As sufficiently discussed by the trial court, besides Cruz's own admission that he took the unaccounted money without Carlos' knowledge and authority, Cruz's guilt was also proven through the following circumstantial evidence: Cruz, as the manager of Chromax, had sole access to the money and other collectibles of Chromax; he had sole authority to issue receipts; he gave commissions without Carlos' authority; he forged the amount in the sales report and receipts; and finally, insinuated that it was Albaitar who misappropriated the money without providing any scintilla of proof to support his accusations.

Contrary to the defense's allegation that due to lack of direct evidence the Court cannot uphold Cruz's conviction, circumstantial evidence is not a "weaker" form of evidence. The Rules of Court does not distinguish between direct and circumstantial evidence insofar as their probative value is concerned. In the case at bar, the combination of the circumstantial evidence draws no other logical conclusion, but that Cruz stole the money with grave abuse of confidence.

Second. It is undisputed that the money unaccounted for was owned by Carlos. While Cruz is the manager of Chromax, whose authority is limited to receiving payments, issuing receipts, and overseeing all aspects pertaining to cash purchases and sale of merchandise of the business, he has no right to dispose of the same, and Carlos, as the owner of Chromax, has sole power of dominion over the proceeds therefrom.

Third. Cruz himself admitted that he took the money for his benefit. During his direct examination, Cruz admitted it was an advance or *vale* which he used for his mother's hospitalization:

Q: Now, there is an entry here, this one named vale, what is this vale all about?

A: Yun po yung cash advance ko kay Mr. Carlos.

²³ 1. [Cruz] is the manager and in-charge of cash purchase and sales of merchandise of Chromax Marketing. Being the manager, he receives payments, issues receipts and handles credit collection of the company.
2. He likewise prepares daily sales reports.
3. Aside from [Cruz], who goes to work daily, Carlos and his immediate family have access to the cash register. However, they seldom go to Chromax Marketing except Carlos who visits 2 to 3 times a week.
4. [Cruz] cannot validly explain the shortages when confronted by Carlos. He just blamed Albaitar for a missing ₱100.00.



- Q: And when did you incur this vale of ₱12,000.00?
A: I cannot remember. That's the time my mother was hospitalized.²⁴

Fourth. Contrary to Cruz's allegation that the unaccounted money he gave as commission to Miescor drivers was authorized by Carlos, the records reveal otherwise. As clearly established by the prosecution, Cruz's act of giving commissions were baseless:

- Q: Also in relation to the invoice receipt wherein you said you discovered that he overpriced the transaction, can you remember that? The sales invoice issued to Miescor?
A: "Ang ibig ko pong sabihin dun, iba yung report n'ya sa [akin. Iba] yung resibong ine-rereport n'ya para magawa n'ya yung instruction ko na daily sales report, iba naman ang ini-issue n'ya sa customer."
Q: Are you not [a]ware of the fact that he did this because he wants the drivers of the Miescor to have a commission on this overpricing?
A: No, sir.²⁵

Therefore, Cruz misappropriated the unaccounted money without Carlos' knowledge or consent.

Fifth. It is indisputable that the act was accomplished without the use of violence or intimidation against persons, or of force upon things as Cruz had free access to the cashier of Chromax.

Sixth. As Chromax's manager, Cruz had access to Chromax's cashier. He was entrusted to receive payments, issue receipts, and oversee all aspects pertaining to cash purchases and sale of merchandise of the business. Indeed, his position entails a high degree of confidence as he had access to the lists of sales report and the cash of the daily sales. However, Cruz took advantage of this trust and confidence. He exploited his position to take the money and was able to accomplish the crime with grave abuse of confidence.

As regards the defense's insinuation that it was Albaitar who misappropriated the money, such bare allegations must fail. It cannot prevail over the overwhelming evidence proving his guilt.

²⁴ TSN, January 13, 2006, p. 242.

²⁵ TSN, 16 April 2004, pp. 133-134.

Cruz averred that his purported signature and declaration in the balance sheet that the missing collectible sum of money which he supposedly used for personal purpose were forged. His testimony belies any allegation of forgery:

Q: Now, you said earlier that when you gave this one to Mr. Carlos, he did not execute this portion and from this Exhibit "A", "A-1", "A-2", "A-4", "A-5". From Exhibit "A-3" and "A-1".

A: At first[,] I only gave him this paper.

Q: When was that?

A: I only wrote this on the 19th of February.

Q: This portion? Exhibit "A-3" and "A-1"?

A: Yes, sir.

Q: And this portion Exhibit "A"[,] "A-2" up to "A-5"?

A: I prepared that on the 10th of February.

Q: Now, what was the reason why you wrote this portion marked as Exhibit "A-3" and "A-1"?

A: He asked me to sign this paper proving that I prepared this and I knew that I was supposed to pay all this because I'm responsible. "So in good faith, tsaka medyo ano na rin po ako nun, parang iba na ang naramdaman ko, dahil yung responsibility ko parang inalis na nya dun na lang ako sa labas kaya sabi ko baka hindi ako magtagal. So in good faith ko po naisulat ito." (Witness pointing to "A-3" and "A-1").²⁶

Premises considered, we find no cogent reason to reverse the conviction of Cruz, who was able to perpetrate the crime of qualified theft through grave abuse of confidence.

Imposable Penalty

The penalty for qualified theft is based on the value of the property stolen, which in this case is ₱97,984.00. To compute for the imposable penalty, we must first take the basic penalty for theft, which is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, that is, eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*. To determine the additional years of imprisonment to be added to the basic penalty, the amount of ₱22,000.00 is deducted from ₱97,984.00, which leaves a difference of ₱75,984.00. This amount is then divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. The

²⁶ TSN, 13 January 2006, pp. 243-244.




resulting quotient of 7 is equivalent to 7 years, which is added to the basic penalty.²⁷

In this case, because Cruz committed qualified theft, his penalty is two degrees higher than the penalty for simple theft, which is *reclusion temporal* in its medium and maximum periods to be imposed in its maximum period or eighteen (18) years, two (2) months, and twenty-one (21) days to twenty (20) years, which shall be added to the resulting quotient of 7 years. The resulting sum shall then be the imposable penalty. Thus, the range of the imposable penalty is twenty-five (25) years, two (2) months, and twenty-one (21) days to twenty-seven (27) years.

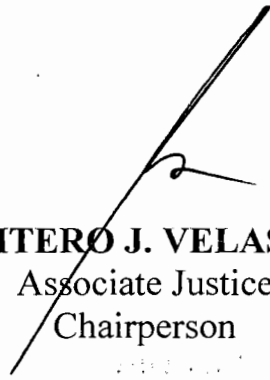
Moreover, as the crime committed is qualified theft, we do not apply the rule in simple theft that the maximum penalty cannot exceed twenty (20) years. The penalty for qualified theft has no such limitation. His penalty exceeds twenty (20) years of *reclusion temporal*, the penalty that should be imposed, therefore, is *reclusion perpetua*.²⁸

WHEREFORE, the appeal is **DISMISSED**. The Decision dated 27 May 2008 of the Regional Trial Court in Criminal Case No. 123851 is **AFFIRMED**, sentencing accused-appellant to serve the penalty of *reclusion perpetua* and ordering him to pay private complainant in the amount of P97,984.00 as actual damages, which shall earn legal interest of six percent (6%) per annum from date of finality of this Court's Decision until full payment as per BSP Circular No. 799, Series of 2013.

SO ORDERED.


JOSE PORTUGAL PEREZ
 Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

²⁷ *Miranda v. People*, 680 Phil. 126,136 (2012).

²⁸ *San Diego v. People*, G.R. No. 176114, April 08, 2015.

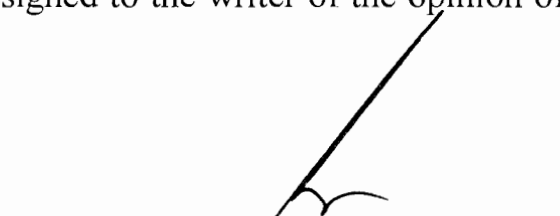
Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
 Associate Justice

(On Official Leave)
DIOSDADO M. PERALTA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice


ATTESTATION

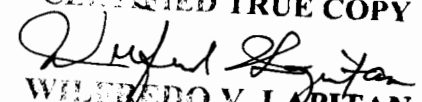
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Acting Chief Justice

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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
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