



REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **December 7, 2022** which reads as follows:*

“G.R. No. 241041 (Flordeliza G. Bosi a.k.a. “Novita C. Gacias” v. People of the Philippines.) — This Court resolves the Petition¹ assailing the Decision² and Resolution³ of the Court of Appeals in CA-G.R. CR-HC No. 07630 which affirmed with modification the Decision⁴ dated June 23, 2015 rendered by Branch 83, of the Regional Trial Court of Quezon City. The Court of Appeals found Flordeliza G. Bosi (*Bosi*) guilty of qualified theft and sentenced her to *reclusion perpetua*.

Petitioner Bosi was charged with qualified theft under the following information:

That on or about the period covering October 2005 to February 2008, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the accused being then and there employed as an accountant of three corporations namely: Time Depot, Belrewmond, and Beawmont was tasked to prepare the Value Added Tax (VAT) declarations due to the Bureau of Internal Revenue (BIR) as well as other local business permits and taxes and to prepare the corresponding payments, through checks payable to cash, did then and there willfully, unlawfully, and feloniously with grave abuse of confidence, with intent to gain, without the consent of her employer, thereof take, steal, and carry away monies by making false and fictitious VAT returns and preparing checks way in excess of the actual amount to the BIR and encash the checks paying little amounts due to the BIR and pocketing the rest of the monies, detailed as follows:

Date of VAT Declaration	Amount Due to BIR	Amount of Check	Excess Amount Pocketed

¹ *Rollo*, pp. 11-32.

² *Id.* at 39-51. Penned by Associate Justice Rosmari D. Carandang (now a retired member of this Court), with Associate Justice Eduardo B. Peralta, Jr. and Associate Justice Ramon Paul L. Hernando (now a member of this Court) concurring.

³ *Id.* at 75-80.

⁴ *Id.* at 33-38. Penned by Presiding Judge Ralph S. Lee.

February 2008	[PHP] 21,702.35	[PHP] 260,987.93	[PHP] 239,285.58
January 2008	11,931.05	293,253.76	281,322.71
March 2006	4,988.66	195,708.20	190,719.54
October 2006	8,816.86	286,397.50	277,580.64
August 2006	4,704.92	262,864.92	258,160.00
May 2006	5,442.10	276,299.62	270,857.52
April 2006	9,575.56	176,058.30	166,482.74
January 2006	7,663.90	253,669.35	246,005.45
December 2005	8,263.46	235,274.76	227,111.30
November 2005	9,374.76	232,298.21	222,923.45
October 2005	7,358.43	219,765.74	212,407.31
			PHP 2,592,856.24

to the damage and prejudice of the aforestated corporations.

CONTRARY TO LAW.⁵

On August 7, 2008, Bosi pleaded not guilty to the charge.⁶ Pre-trial commenced, thereafter, trial then ensued.

The version of the prosecution was succinctly summarized by the Regional Trial Court in this manner:

Prosecution witness Cresta Carranto is a Human Resource Officer of Time Depot and Belremond, Inc. In her testimony, she confirmed that accused Bosi started working in Belremond in 1998 and it was two (2) years later that said accused applied as an Accountant of all companies to which Lim was President. Carranto explains that it was by reason of the trust and confidence given to Bosi that she was assigned with tasks related to the payment of taxes.

In his testimony, private complainant Richmond S. Lim is the Managing Director or the President of a group of companies comprised of Time Depot, Belremond and Beawmont. He testified that he knew of accused Bosi back in the 90's as they were co-employees in a defunct company named Super East Marketing and Megatronics, where members of his family used to be partners. After the aforesaid company had closed, Lim stated that he formed Belremond, Inc. sometime in 1997 where accused Bosi was tasked with bank transactions and acted as its Accountant. As for Time Depot and Beawmont, Lim stated that the accused had the same position as Accountant and was tasked to handle the companies' compliance with VAT requirements provided by the BIR. His testimony revealed that he came to know of certain VAT discrepancies in the accounting done by Bosi when he received information that the teller of RCBC called asking Bosi to return the amount of [P]100,000.00 encashed by the latter, where said amount was meant to be paid by Bosi to UCPB. It was later on that he, together with other accounting officers of

⁵ *Id.* at 40.

⁶ *Id.* at 40-41.

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the company, found out that Bosi prepared two (2) documents – a falsified one with a bigger amount and a second document reflecting the actual amount due to the BIR. He also testified that upon verification, no payment has been made to the BIR in the amount of [P]100,000.00. He claims that after this incident, he assigned officers from the accounting department of the company, namely witnesses Trance and Pelaco, to look into other discrepancies that could exist as found in the company books and records. It was after this inquiry that they realized an initial discrepancy of about 8 Million Pesos, of which the amount of 2 Million Pesos was for VAT payments for the years 2005 to 2008 which is the subject of this present case. Witness Lim also testified that a demand letter was sent to Bosi and that she replied in two (2) separate letters, one for Lim and the other for his parents, sending her apologies and stating a list of assets that may be used to pay for the amount due. It was also in this letter where Bosi stated that she will pay [P]30 Million in thirty (30) days. Moreover, Lim testified that Bosi gave them an affidavit in relation to her past wrongful actions. However, it was after this affidavit that Bosi no longer communicated with private complainant. They claimed that she disappeared all of a sudden, but that she left a title to (sic) a certain parcel of land, which appeared to have been declared lost according to the records of the Registry of Deeds of Tuguegarao and that Bosi attempted the same to be reconstituted. These then resulted in damage and prejudice on the part of Lim.

Prosecution witness Whellyn L. Trance was the former Accountant of Belremond, Inc. but later on became Head Accountant of all three (3) companies as a replacement for accused Bosi in 2008. Trance testified that the main reason of her assumption of Bosi's previous position were "anomalous transactions" entered into by the accused when the latter was the Head Accountant. Trance stated that she was tasked to investigate the matter regarding taxes paid to the BIR as well as those paid to the Local Government and that the same was conducted by looking into previous tax declarations of the three (3) companies, as well as by gathering VAT Returns, checks issued by the company, bank deposit slips, and the official BIR printouts. Further, Trance testified that she was able to gather twelve (12) checks payable to cash not to BIR, all issued by Time Depot. She explained to the court that all twelve (12) checks, gathered from the company's Treasury Office through witness Rhodora Pelaco, were prepared by accused Bosi and signed by Lim, but the same were all encashed. Trance also stated that she was given permission by private complainant Lim to talk to accused Bosi after her audit team came up with a final report as regards the investigation. In addition, the prosecution witness revealed that their findings showed that the total amount of the twelve (12) checks was [P]2,900,000.00, but an amount of [P]66,000.00 was actually paid to the BIR by Bosi, as supported by certain BIR documents. This led her to the conclusion that Bosi bloated particular amounts stated in the checks and that the accused was able to convince Lim to sign the checks Payable to Cash.

Prosecution witness Rhodora P. Pelaco is the Assistant Treasurer of Time Depot, as well as its allied companies. Records also reveal of her participation in the investigation of the issues surrounding accused Bosi.

In her testimony, Pelaco said that the office received a call from RCBC – Del Monte informing them that the said bank had made an overpayment to accused Bosi. Pelaco revealed to the court that the overpayment arose when Bosi encashed a check worth [P]285,322.30, but the bank gave her [P]385,322.30 instead. This came to her knowledge

because as Assistant Treasurer, it was her duty to take note of all amounts encashed by Bosi. Pelaco also testified that upon confrontation, Bosi denied being overpaid by RCBC – Del Monte, but Bosi later on told her that she already returned the [P]100,000.00 in question, and the same was confirmed in the presence of Pelaco by RCBC Management. Pelaco stated that Bosi told her that the said amount was brought by the latter to UCPB – Del Monte as payment to BIR, but upon verification, the said bank revealed that no payment has been made to them. Witness Pelaco testified that it was upon further investigation that she realized the presence of differences between the returned checks and the checks issued to which Bosi was held responsible. She also maintained that upon her findings, there appeared to be discrepancies based on VAT returns and the checks encashed.

To corroborate, prosecution witness Emmanuel Domingo, the Paralegal Officer, Court Liason, and an authorized representative of Metrobank – San Francisco, Del Monte, testified as to how the said bank goes about handling pay-to-cash checks. He added that upon review by the bank, it was shown that the checks given to them were issued by Time Depot, and that it was accused Bosi who encashed the same, and confirmed as to who signed the check(s).

Lastly, prosecution witness Jeanine Chua was the bank manager of RCBC – Del Monte at the time the matters leading to the case transpired. She testified about a certain pay-to-cash check by Time Depot given to the RCBC – Rockwell. In her statement, she explained the process being followed by RCBC as regards encashments, and she confirmed that it was Bosi who was making the withdrawals and was same signatory as to the receipt of the said amounts stated in the checks.”⁷

Bosi did not present any evidence despite the numerous chances given by the Regional Trial Court. Thus, the Regional Trial Court deemed the case submitted for decision in an Order⁸ dated June 9, 2015.

On June 23, 2015, the Regional Trial Court rendered its Decision finding Bosi guilty of qualified theft, the dispositive portion reads:

Wherefore, in view of the foregoing, accused Flordeliza G. Bosi (a.k.a Novita C. Garcias) is found guilty beyond reasonable doubt of the crime of Qualified Theft under Article 310 in relation to Article 308 of the Revised Penal Code. Considering that the value of the thing qualifiedly stolen being over P22,000.00, the statutory penalty for the said crime is *reclusion temporal* in its medium and maximum periods or fourteen (14) years, eight (8) months and one (1) year for every additional P10,000.00 in excess of P22,000.00. Since the value of the stolen amount is P2,592,856.21, Accused is hereby sentenced to suffer the penalty of *reclusion temporal* in its maximum period of twenty (20) years and one (1) day to forty (40) years of *reclusion perpetua*. Accused is hereby directed to pay the Private Complainant Richmond S. Lim, representative of Time Depot, Belrewood, and Beawmont, the amount of P2,592,856.24 as civil liability.

⁷ CA rollo, pp. 189-191.

⁸ *Id.* at 191.

SO ORDERED.⁹

On appeal, the Court of Appeals affirmed with modification the decision of the Regional Trial Court, thusly:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit. The assailed RTC Decision dated June 23, 2015 is hereby **AFFIRMED** with the **MODIFICATION** that the penalty is *reclusion perpetua*.

SO ORDERED.¹⁰ (Emphases in the original)

In affirming the conviction of Bosi, the Court of Appeals opined that the State was able to prove that Bosi took the amount of PHP 2,592,856.24 without authority and consent belonging to the three companies managed by Richmond S. Lim (*Lim*), and that the taking was accomplished without the use of violence or intimidation against persons, nor force upon things.¹¹

The Court of Appeals further held that Bosi's act of taking of PHP 2,592,856.24 was committed with grave abuse of confidence and noted that Bosi as an accountant of Lim was entrusted with major business matters concerning payment of the three companies' taxes. Such position of trust and confidence was the tool used to take the excess amount of money intended for the payment of the companies' Value Added Tax (*VAT*).¹²

Bosi was able to steal from the three companies by making false and fictitious VAT returns showing excessive amount of taxes for payment to the Bureau of Internal Revenue (*BIR*), preparing checks for these fictitious VAT returns, pays smaller amounts due to the BIR, and taking the remainder.¹³ The CA also considered the *salaysay* of Bosi acknowledging her guilt as evidence against her.¹⁴

Bose filed a motion for reconsideration, which the Court of Appeals denied in its Resolution¹⁵ dated June 21, 2018. Thus, the present Petition to this Court.

Bosi claims that there is nothing in the records that will prove that the prosecution witness authenticated the checks. This is contrary to the statement of the Court of Appeals that the prosecution's witness was able to identify the

⁹ *Id.* at 38.

¹⁰ *Id.* at 51.

¹¹ *Rollo*, p. 46.

¹² *Id.* at 47.

¹³ *Id.*

¹⁴ *Id.* at 50.

¹⁵ *Id.* at 75-76.

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checks.¹⁶ Bosi in essence, asserts that the amount paid to the BIR were not proven as evidence and the checks presented were not properly authenticated. Thus, there can be no basis of the amount allegedly pocketed.¹⁷

The People of the Philippines through the Office of the Solicitor General (*OSG*) counters that Bosi resorted to an improper remedy since her Petition raises questions of facts that is not allowed by Rule 45 of the Rules of Court.¹⁸ The *OSG* claims that the testimonial and documentary evidence adduced by the prosecution was correctly given weight and consideration.¹⁹

This Court's Ruling

The Petition is without merit.

Section 1, Rule 45 of the Rules of Court is clear that petitioners may only raise questions of law.²⁰ This is because the resolution of the factual issues are supposed to be resolved by trial courts. This Court, as it is not a trier of facts will not ascertain the facts but would rather subscribe to the findings of the courts that passed upon the case. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.²¹

In different occasions, we recognized the following exceptions as to the limitation of the subject of review, as follows:

- (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
- (b) When the inference made is manifestly mistaken, absurd, or impossible;
- (c) When there is grave abuse of discretion;
- (d) When the judgment is based on a misapprehension of facts;
- (e) When the findings of facts are conflicting;
- (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (g) When the CA's findings are contrary to those by the trial court;
- (h) When the findings are conclusions without citation of specific evidence on which they are based;

¹⁶ *Id.* at 14.

¹⁷ *Id.* at 28.

¹⁸ *Id.* at 94-95.

¹⁹ *Id.* at 96.

²⁰ Section 1, Rule 45 of the Rules of Court reads:

SECTION 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

²¹ *Angeles v. Pascual*, 673 Phil. 499 (2011) [Per J. Bersamin, First Division].

- (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
- (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
- (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.²²

In the instant case, this Court finds no cogent reason to warrant reversing or modifying the findings of the Court of Appeals, which are consistent with the established facts. We find that the Court of Appeals had already exhaustively reviewed the case and came up with the correct appreciation of the pieces of evidence.

As correctly ruled by the Court of Appeals, the State proved all the elements of qualified theft. The pertinent portion of the decision reads:

As defined under Article 308 of the Revised Penal Code, theft is committed by any person who with intent to gain, but without violence or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. Under Article 310 of the same Code, if committed with grave abuse of confidence, the crime of theft becomes qualified. Thus, the crime of qualified theft is committed when the following elements are present, to wit: 1] there was a 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; 5] the taking was accomplished without violence or intimidation against the person or force upon things; and 6] it was done with grave abuse of confidence, and, as correctly ruled by the trial court, all these elements are present in Bosi's case.

The prosecution was able to prove beyond reasonable doubt that the amount of Php2,592,856.24 taken by Bosi without authority and consent belongs to the three companies managed by private complainant Lim, and that the taking was accomplished without the use of violence or intimidation against persons, nor force upon things. The intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by Bosi of the monies of the companies.

It cannot be denied that the taking of Php2,592,856.24 was done with grave abuse of confidence. As the accountant of the three companies being managed by private complainant Lim, Bosi was entrusted with major business matters concerning payment of the companies' taxes. Bosi made use of her position and abused the trust and confidence reposed upon her by Lim, to obtain the excess amount of money intended for the payment of the companies' value added tax (VAT). Bosi was able to steal from the coffer of the three companies by making false and fictitious VAT returns showing excessive amount of taxes for payment to the BIR and preparing checks for these fictitious VAT returns, but paying little/small amounts due to the BIR and pocketing the rest of the monies. The checks were even issued "payable to cash" all encashed by the accused, a clear showing that

²² *Spouses Andrada v. Pilhino Sales Corp.*, 659 Phil. 70 (2011) [Per J. Bersamin, Third Division].

a high level of trust and confidence was reposed on her by the management of the companies as well as by private complainant Lim. It must be noted that Bosi and Lim were coemployees before the three companies [Time Depot, Belremond and Beawmont Corporations] were established.

Contrary to accused-appellant's claim, it was not the prosecution's counsel but the prosecution witness Whelyn Trance who properly identified and authenticated the checks subject of this case. As head accountant of the three companies and co-employee of accused-appellant, Trance can fully testify on the genuineness of the signature of accused-appellant appearing on the subject checks. Likewise, it cannot be denied that the original copy of the checks were presented during trial. As explained in People's brief:

“x x x. The pre-marked documentary evidence were submitted and offered in evidence in lieu of the original copies thereof after the defense itself utilized the original copies in the course of its cross-examination. Surely, appellant cannot now deny the existence of the original documents since, as borne by the transcripts of stenographic notes, the original documents were presented and appellant's counsel was requested to make a comparison of the originals with the photocopies thereof.”

Clearly, the authenticity and existence of the checks were properly established, thus, correctly admitted as evidence.²³ (Citations omitted)

Even if we affirm the conviction of the petitioner, this Court deems it proper to modify the penalty due to the amendments to Articles 309 of the Revised Penal Code (*RPC*) that provided a more lenient and favorable penalty to the accused.²⁴ The amendment brought about by Republic Act No. 10951 being more favorable to the accused, is given a retroactive effect, and, thus, the need to revisit the computation of penalties. Article 309 of the *RPC*, as amended reads:

Article 309. *Penalties.* — Any person guilty of theft shall be punished by:

1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million two hundred thousand pesos (₱2,200,000); but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one (1) year for each additional One million pesos (₱1,000,000), but the total of the penalty which may be imposed shall not exceed twenty (20) years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be[.]

²³ *Rollo*, pp. 46-47.

²⁴ Article 22 of the Revised Penal Code provides:

Article 22. *Retroactive Effect of Penal Laws.* — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

Applying Article 309 in the case under consideration, if the value of the thing stolen is more than PHP 1,200,000.00 but does not exceed PHP 2,200,000.00, the prescribed penalty is *prision mayor* in its minimum and medium periods. In case the value of the thing stolen exceeds PHP 2,200,000.00, the penalty shall be the maximum period of *prision mayor* in its minimum and medium periods. The period covered by the penalty is eight (8) years, eight (8) months and one (1) day to ten (10) years. In one case, the maximum penalty imposed where the amount involved exceeds PHP 2,200,000.00 is 10 years, which is the maximum term of *prision mayor* in its medium period.²⁵

Considering that the amount involved is PHP 2,597,866.24, and the excess amount from PHP 2,200,000.00 does not equate to PHP 1,000,000.00, no additional one year of penalty can be added.

Since the theft is qualified, the provisions of Article 310 of the RPC²⁶ provides that the prescribed penalty is two degrees higher than that prescribed for simple theft.

There being no aggravating and mitigating circumstances, two degrees higher than *prision mayor* minimum and medium periods is *reclusion temporal* medium and maximum, which has a range of fourteen (14) years, eight (8) months and one (1) day to twenty (20) years, which must still be imposed in its maximum period, *i.e.* eighteen (18) years, two (2) months and twenty one (21) days to twenty (20) years, considering the amount involved.

Thereafter, applying the Indeterminate Sentence Law, the range of the minimum term shall be taken within the penalty next lower in degree, which is within the range of *prision mayor* maximum to *reclusion temporal* minimum, that has a period of ten (10) years and one (1) day to fourteen (14) years and eight (8) months. Accordingly, the accused is sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor* as minimum to eighteen (18) years two (2) months and twenty-one (21) days of *reclusion temporal* as the maximum term of imprisonment.²⁷

²⁵ *Daigle v. Cruz*, G.R. No. 246914, March 11, 2020 (Notice).

²⁶ Article 310 of the Revised Penal Code states:

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

²⁷ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, *En Banc*].

FOR THESE REASONS, this Court **DENIES** the petition for lack of merit. The Decision and Resolution of the Court of Appeals in CA-G.R. CR-HC No. 07630 are **AFFIRMED** with modification.

This Court **FINDS** Flordeliza G. Bosi guilty of qualified theft and **IMPOSES** the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years, two (2) months and twenty-one (21) days of *reclusion temporal* as maximum.

This Court **ORDERS** Flordeliza G. Bosi to pay Richmond S. Lim the amount of PHP 2,592,856.24 representing the amount stolen, with legal interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until full payment.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *12/21*
21 DEC 2023

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 83
Quezon City
(Crim. Case No. Q-08-15310)

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Supreme Court, Manila

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*with a copy of the June 30, 2017 CA Decision
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