



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 237982

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO, JJ.

- versus -

YOLANDA SANTOS y PARAJAS,
Accused-Appellant.

Promulgated:
OCT 14 2020

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DECISION

PERALTA, C.J.:

Before this Court is an appeal from the Decision¹ dated November 3, 2017, of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 08721, where the CA affirmed the Decision² dated August 17, 2016 of the Regional Trial Court (RTC) of Pasay City, Branch 118, in Criminal Case Nos. R-PSY-14-08614-CR to R-PSY-14-08627-CR which convicted Yolanda Santos y Parajas (*accused-appellant*) of qualified theft.

The antecedent facts are as follows:

¹ Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Ramon Paul L. Hernando (now a Member of the Supreme Court) and Zenaida T. Galapate Laguilles, concurring; *rollo*, pp. 2-23.

² CA *rollo* pp. 64-91.

On July 11, 2014, fourteen (14) Informations for qualified theft under Article 310 of the Revised Penal Code (*RPC*) were filed against accused-appellant, to *wit*:

Criminal Case No. R-PSY-14-08614-CR³ for Qualified Theft

That on or about the 13th day of September, 2011, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP12,935.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP12,935.00

Contrary to law.

Criminal Case No. R-PSY-14-08615-CR⁴ for Qualified Theft

That on or about the 12th day of January, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP100,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP100,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08616-CR⁵ for Qualified Theft

That on or about the 24th day of January, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP45,200.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP45,200.00

³ Records, Vol. 1, pp. 1-2.

⁴ *Id.* at 17-18.

⁵ *Id.* at 33-34.

Contrary to law.

Criminal Case No. R-PSY-14-08617-CR⁶ for Qualified Theft

That on or about the 2nd day of February, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP17,716.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP17,716.00.

Contrary to law.

Criminal Case No. R-PSY-14-08618-CR⁷ for Qualified Theft

That on or about the 14th day of February, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP60,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP60,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08619-CR⁸ for Qualified Theft

That on or about the 17th day of March, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP58,014.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP58,014.00.

Contrary to law.

⁶ *Id.* at 49-50.

⁷ *Id.* at 65-66.

⁸ *Id.* at 80-81.



Criminal Case No. R-PSY-14-08620-CR⁹ for Qualified Theft

That on or about the 23rd day of April, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP30,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP30,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08621-CR¹⁰ for Qualified Theft

That on or about the 29th day of May, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP300,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP300,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08622-CR¹¹ for Qualified Theft

That on or about the 29th day of June, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP100,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP100,000.00.

Contrary to law.

⁹ *Id.* at 96-97.

¹⁰ *Id.* at 112-113.

¹¹ *Id.* at 128-129.

Criminal Case No. R-PSY-14-08623-CR¹² for Qualified Theft

That on or about the 8th day of November, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP110,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP110,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08624-CR¹³ for Qualified Theft

That on or about the 8th day of December, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP58,014.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP58,014.00.

Contrary to law.

Criminal Case No. R-PSY-14-08625-CR¹⁴ for Qualified Theft

That on or about the 11th day of December, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP50,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP50,000.00.

Contrary to law.



¹² *Id.* at 144-145.

¹³ *Id.* at 160-161.

¹⁴ *Id.* at 176-177.

Criminal Case No. R-PSY-14-08626-CR¹⁵ for Qualified Theft

That on or about the 7th day of January, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP58,014.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP58,014.00.

Contrary to law.

Criminal Case No. R-PSY-14-08627-CR¹⁶ for Qualified Theft

That on or about the 19th day of January, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP30,000.00 belonging to the aforementioned private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP30,000.00.

Contrary to law.

On July 14, 2014, warrants of arrest were issued against accused-appellant.¹⁷ Upon arraignment, accused-appellant pleaded not guilty on the charges against her.¹⁸ Trial on the merits ensued.

Private complainant Dasman Realty and Development (*Dasman Realty*) is a corporation engaged in realty and development business.¹⁹ Prosecution witness Ronald Bañares (*Bañares*) is one of the officers/employees designated to represent Dasman Realty in the proceedings of this case, as evidenced by the Secretary's Certificate presented in open court.²⁰ He is also the bookkeeper of Dasman Realty who was tasked to review the original and acknowledgment receipts issued in connection with the sale transactions of the corporation as well as the collection of payment for association dues and utilities.

¹⁵ *Id.* at 192-193.

¹⁶ *Id.* at 208-209.

¹⁷ *Id.* at 222-223.

¹⁸ Records, Vol. 2, p. 231.

¹⁹ *Id.* at 239-246.

²⁰ *Id.* at 246.

In his Judicial Affidavit²¹ dated December 8, 2014, Bañares stated that accused-appellant was the Officer In Charge (OIC)-Property Accountant of Dasman Realty for its Dasman Residences project whose duties and responsibilities include, among others, the following:

1. To collect from the buyers the payments for units sold;
2. To collect from the tenants the payments for association dues;
3. To issue receipts for the payments received;
4. To account and liquidate all payments received/collected; and
5. To liquidate and remit all payments received/collected.

Prompted by a report alleging that accused-appellant failed to account for and remit various payments received by her from clients to Dasman Realty, the latter issued a Memorandum dated July 11, 2013²² authorizing Bañares to conduct a recording and bookkeeping review of the sale transactions and payment receipts due to the corporation under the accountability of accused-appellant. Upon evaluation of the original receipts and acknowledgment receipts as well as records of transactions, Bañares discovered that within the period of August 2011 to July 2013, fourteen (14) receipts,²³ the aggregate value of which amounted to One Million Twenty Nine Thousand Eight Hundred Ninety Three Pesos and 33/100 (₱1,029,893.33) under the accountability of the accused-appellant were unremitted to Dasman Realty.²⁴

Bañares also stated that all 14 receipts showed the signature of accused-appellant which revealed that she issued several receipts in favor of Dasman Realty's clients, and that she had received payments from them but failed to remit the same to Dasman Realty. He claimed that a review of the customer remittance records maintained by the accused-appellant herself and the customer subsidiary record which is in custody of Dasman Realty, there was nothing to show that accused-appellant reported the subject payments of the clients, and thereafter remitted the same to Dasman Realty. Bañares explained that due to accused-appellant's failure to record the amounts collected as indicated in the subject official receipts and acknowledgment receipts in the designated logbooks and remit the same to the Dasman Realty, she clearly violated the trust and confidence reposed upon her by the former.²⁵

In a Memorandum dated September 4, 2013,²⁶ Bañares reported to Dasman Realty's management the result of the internal review he made. As a

²¹ *Id.* at 323-332.

²² *Id.* at 247.

²³ *Id.* at 537-550.

²⁴ *Id.* at 323-332.

²⁵ *Id.*

²⁶ *Id.* at 255.

result, Dasman Realty, through its counsel, made a formal demand on accused-appellant to liquidate and remit the subject amounts specified in the Memorandum dated September 10, 2013.²⁷ Thereafter, Bañares claimed that in a meeting on September 25, 2013, accused-appellant admitted her liability for the unremitted collections and offered to settle her obligation through salary deduction until fully paid. Bañares further alleged that on the same day, accused-appellant executed a sworn statement where she admitted that she handled the collection for Dasman Realty somewhere beginning August or September 2011, and that she will pay the money she failed to remit to Dasman Realty.²⁸

For its part, the defense presented accused-appellant as its lone witness.

On direct examination, accused-appellant testified that she was employed as OIC-Property Accountant by Dasman Realty from July 2011 to September 2013.²⁹ She claimed that she does not know Bañares as he was only hired in July 2013 for bookkeeping. She explained that prior to July 2012, Dasman Realty had no bookkeeper and that a certain Arnold Reblando (*Reblando*), its accounting officer, was the one who did the accounting work for it. Accused-appellant claimed that she only found out about the outstanding amount of ₱1,029,893.33 during the board meeting where she was informed about the missing remittances and that she should return the same immediately. Accused-appellant, however, denied that she was the one who took the money. She claimed that she turned over the money to a certain Engineer (*Engr.*) Dejon and the latter remitted the money to a certain Macaldo. However, accused-appellant averred that Engr. Dejon who was previously the administrator of Dasman Realty passed away on October 4, 2012.

Further, accused-appellant likewise claimed that there were times that acknowledgment receipts were used instead of officials receipts for tax purposes. She averred that Reblando likewise instructed her to do “window dressing” which means that all the payments made after the death of Engr. Dejon were made to apply to those the latter failed to remit. Finally, accused-appellant claimed that Dasman Realty filed the instant criminal cases against her only because she knew about the involvement of the owners of Dasman Realty in the ambush of their business partner.

On August 17, 2016,³⁰ in Criminal Case Nos. R-PSY-14-08614-CR to R-PSY-14-08627-CR, the RTC of Pasay City, Branch 118, rendered

²⁷ *Id.* at 256.

²⁸ *Id.* at 258-260.

²⁹ TSN, March 30, 2015, p. 6.

³⁰ Records, Vol. 2, pp. 712-739.

judgment convicting accused-appellant of qualified theft, the dispositive portion of which reads:

WHEREFORE, all the foregoing premises considered, the Court finds the [accused-appellant] YOLANDA P. SANTOS, GUILTY beyond reasonable doubt for Qualified Theft and is hereby sentenced to suffer the penalty of *reclusion perpetua* with eligibility for pardon.

The [accused-appellant] is also ordered to indemnify the private complainant, DASMAN REALTY AND DEVELOPMENT CORPORATION, the amount of One Million Twenty Nine Thousand Eight Hundred Ninety Three Pesos and 33/100 (P 1,029,893.33) as stated in the Information which represents the total value of the unremitted payments that were received by the [accused-appellant] in her capacity as the former OIC-Property Accountant of the complainant information plus legal interest computed from the filing of the information until fully paid.

SO ORDERED.³¹

Aggrieved, accused-appellant filed an appeal and sought the reversal of her conviction before the CA. However, in the assailed decision of the appellate court, the latter denied her appeal. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated August 17, 2016 of the RTC, Branch 118, Pasay City in Criminal Cases Nos. R-PSY-14-08614-CR to R-PSY-14-08627-CR is hereby AFFIRMED.

SO ORDERED.³²

Hence, this petition for review on *certiorari*, raising the sole issue of:

Whether the Court of Appeals erred in convicting accused-appellant of the crime of qualified theft despite failure of the prosecution to prove her guilt beyond reasonable doubt

Accused-appellant would like to impress upon this Court that the prosecution failed to prove that she was the one who took away the cash collections from Dasman Realty's clients. She claimed that the mere fact that the acknowledgment receipts and official receipts showed her initials does not give rise to the presumption that she stole the unremitted collections, in the absence of any proof that she is in possession of the same.

³¹ *Id.* at 738-739.

³² *Rollo*, p. 22.

The petition lacks merit.

The crime of theft is defined under Article 308 of the RPC, to *wit*:

Article 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of neither 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 objects 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 fruits, cereals, or other forest or farm products.

On the other hand, Article 310 of the RPC reads:

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 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. (Emphasis Ours)

Thus, the elements of qualified theft punishable under Article 310 in relation to Article 308 of the RPC are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done 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 person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.

In the instant case, the prosecution was able to establish the presence of all the elements of qualified theft under Article 310 in relation to Article 308 of the RPC. Accused-appellant, as part of her duty as OIC-Property Accountant of Dasman Realty, admitted that she received the payments from



Dasman Realty's clients for the period September 2011 to May 2013 in the total amount of ₱1,029,893.33, thus, she had actual possession of the monies, yet failed to remit the same to Dasman Realty. As an employee tasked to merely collect payments from Dasman Realty's clients, she did not have a right over the thing as she was merely entrusted to collect the cash collections in behalf of Dasman Realty. In fact, accused-appellant never asserted any such right over the collections, as she even admitted that upon receipt of the monies, it was her duty to remit the collections to the cashier, to *wit*:

x x x x

Q What did you do with the money when you receive it?

A **Actually ma'am, every time we received the money we turn it over to the cashier.**

Q And when was this official receipt issued?

A This was issued September 13, 2011 ma'am.

Q And Ms. Witness when was the money received turned over to your cashier?

A The same date ma'am

Q And what is your proof in saying that the money was received by your cashier?

A Because there is a record ma'am.

Q What is the record book!?

A Record Book Receiving Payments.³³ (Emphasis Ours)

x x x x

Clearly, accused-appellant was entrusted only with the material or physical (natural) or *de facto* possession of the thing, thus, her misappropriation of the same constitutes theft.³⁴ A sum of money received by an employee in behalf of an employer is considered to be only in the material possession of the employee.³⁵

Moreover, accused-appellant identified the customer remittance record she had in her possession as well as her signatures appearing on the same, and explained that it is where she listed down her collections.³⁶ Thereafter, she claimed that she would remit the payments she had collected from clients to the cashier, and present the customer remittance record to the cashier so that the latter will sign on it as proof that she has received the payment collections.³⁷ On cross-examination, accused-appellant admitted that while she was able to collect payments from the clients of Dasman Realty, she failed

³³ TSN, March 30, 2015, pp. 12-13.

³⁴ *Matrido v. People*, 610 Phil. 203, 213 (2009).

³⁵ *Id.*

³⁶ TSN, April 28, 2015, p. 24

³⁷ TSN, Cross-examination, April 28, 2015, p. 25-26

to record 14 official receipts which she had issued to clients in the said remittance records, to wit:³⁸

Atty. Dasig-

Q Madam witness, in this customer remittance record where you record your collections, am I correct?

A Yes, sir.

Q And whenever you remit your collections to the cashier, Nemia Macaldo, you present this customer remittance record to her and for the cashier to sign that she received the amounts you listed here, am I correct?

A Yes, sir.

Q Madam witness, can you tell us, the fourteen (14) official receipts here, can you tell us if you have recorded these in this customer remittance record?

A This was unremitted.

Q You said your collections, you have to record in this customer remittance record. The question is, will you please look at these official receipts and tell us where in this customer remittance record you recorded these official receipts and acknowledgment receipts.

A Actually, sir, these remitted amounts were the receipts given by Mr. Dejon for me to record to be remitted to Macaldo.

THE COURT

Q The question is, where in this customer remittance record are the fourteen (14) receipts which are the subject matter of these cases. Where?

A They are not there, your Honor.

ATTY. DASIG

Q They are not there. Madam witness, after you received the demand letter of Dasman Realty, you made a reply in the form of a sworn statement as you described it, am I correct?

A Yes, sir.

Q And in your reply or your sworn statement, you were asking the management for you to return the amounts you have not remitted out of your salary, am I correct?

A Because it is your instruction.

Q Just answer yes or no.

A Yes.

Q And the management rejected your proposal, am I correct?

A Yes, sir.³⁹ (Emphasis Ours)

x x x x

Further, the prosecution likewise sufficiently established the element of intent to gain on the part of accused-appellant based, to wit:

ATTY. DULAY-

Q According to Mr. Bañares, you received subject amounts stated in official and acknowledgment receipts, what can you say about that?

A Actually ma'am I am only the one who signed that with my initial

Q So, Ms. Witness in Criminal Case No. R-PSY-14-08614-CR marked as Exhibit "D" for the prosecution and Exhibit "D-2" your signature, I'm showing this to you Ms. Witness Exhibit "D" to "D-2", is that your signature?

A My initial ma'am.

Q And Ms. Witness according to this O.R. how much was the sum of pesos?

A P12,935.00 ma'am.

Q You received this money?

A Yes, ma'am.

Q **What did you do with the money when you received it?**

A **Actually, ma'am, every time we received the money we turn it over to the cashier.**

Q **And when was this official receipt issued?**

A **This was issued September 13, 2011 ma'am.**

Q **And Ms. Witness when was the money received turned over to your cashier?**

A **The same date ma'am**

Q And what is your proof in saying that the money was received by your cashier?

A Because there is a record ma'am.

Q What is the record book?

A Record Book Receiving Payments.

Q **And who received the payments remitted to the cashier?**

A **Actually, I turned over the money to Engr. Dejon and Engr. Dejon in turn turned over the money to Ms. Macaldo.**

Q. **And who is this Engr. Dejon?**

A **Engr. Dejon is the administrator of Dasman Realty & Development Corporation ma'am.**

³⁹ TSN, April 28, 2015. pp. 24-27.

Q Where is he now?

A He's already dead.

Q When did he die?

A October 4, 2012 ma'am.

Q What happened to him?

A He was hospitalized, he died suddenly.

Q Ms. Witness you turned over the payments to Engr. Dejon, is that authorized by your company?

A Yes, ma'am

Q And who witnessed the payments of customers are being turned over to Engr. Dejon?

A There were three (3) of us, Engr. Dejon, me and one assistant.

Q So, would you have any idea as to where Engr. Dejon put the money that you have turned over to him?

A Actually it's like this ma'am, everything that we have turned over to him, he will turn over to Ms. Macaldo, that is the procedure.

Q And Ms. Macaldo is aware of the fact that it is Engr. Dejon who was receiving money that you have collected?

A Yes, ma'am.

Q Is Ms. Macaldo still connected with Dasman Realty to date or at present?

A Yes, ma'am.⁴⁰

x x x x

Q So, Ms. Witness, do you know after you turned over the said amount to Engr. Dejon, do you know where Engr. Dejon would give his money to?

A To Ms. Macaldo ma'am.

Q Nalalaman po ninyo?

A Opo, ma'am.

Q Alam ninyo?

A Opo ma'am.

Q Was the money or where the money received by Engr. Dejon given to Ms. Macaldo in your presence?

A No, ma'am.

Q So, you have no idea? How did you know that the money received by Engr. Dejon was or were received by Ms. Macaldo?

A Because it is the process ma'am. That's the instruction given to us by our administrator, Mr. Dasig because I am only the OIC of Property

Accountant. So, the instructions were for us to give the money to Engr. Dejon.⁴¹

X X X X

Q Would you please tell the Honorable Court why was (sic) the acknowledgment receipt instead of an Official Receipt?

A Because that was given to us instead of a receipt.

Q And who gave you that instruction?

A From the accounting officer.

Q Who was the accounting officer?

A Arnold Reblando?

Q Did you not find it unusual that Mr. Reblando was (sic) or instructed you to use acknowledgment receipts instead of official receipts?

A All of that it was for tax receipts.

Q Ms. Witness you were informed that it was for tax receipts?

A Yes, ma'am.

Q And it is to conceal the real sales income of Dasman Realty. Am I correct?

A Yes, ma'am.

Q So, may I invite you to Exhibit "J" under R-PSY-14-08620-CR, the acknowledgment receipt no. 0443, dated April 23, 2012, Would you be able to identify the initial marked by the prosecution as their Exhibit "J-2"?

A Yes, ma'am.

Q And whose initial is that?

A That's my initial ma'am?

Q What date is that?

ATTY. DULAY-

Your Honor, may we move that it be noted that the acknowledgment receipt has no date, your Honor?

COURT-

Which acknowledgment receipt? Is that the only acknowledgment receipt?

ATTY. DULAY-

Marked by the prosecution as their Exhibit "J", your Honor. It has no date.

Q Ms. Witness, who made this notation in red ink?

A I do not know ma'am.

COURT-

Who made it?



⁴¹ *Id.* at 19-20.

ATTY. DULAY-

This was not her.

Q Who made this?

A I do not know ma'am.

ATTY. DULAY-

Your Honor, may we move that it be noted that there's a red ink, a notation which says note: unremitted.

Q And from whom did you receive the money?

A From unit 507 ma'am.

Q And for how much?

A P30,000.00 pesos ma'am.

Q In all these receipts, did any of the persons who made those payments make any complaints at Dasman Realty?

A Yes, ma'am.

Q **May I invite your attention to Exhibit "K", Acknowledgment Receipt No. 0942 dated May 29, 2013 and Exhibit "K-2", was marked for the prosecution and what do you see under Exhibit "K-2"**

A **The receipt is with my initial ma'am.**

Q **And from where did you receive payment?**

A **From Mary Ann Mondres, ma'am.**

Q **And how much was the payment made by Mondres?**

A **The amount is P300,000.00 ma'am.**

Q **And to whom did you turn over the amount made by Ms. Mondres?**

A **The same to Engr. Dejon ma'am.**⁴²

x x x x

Q *The said collection was turned over to whom?*

A *Kasi ganito po yan ma'am. Itong mga resibo nato since namatay na si Engineer, kasi hindi lang naman poi tong ma'am yung na find out naming na hindi ni-remit ni Engineer. So, ang instruction po sakin ni kuya Arnold is magkaroon ng window dressing. Kung baga uunahin bayaran muna yung mga hindi nabayaran ni Engineer. Instruction nya yon sakin kasi nagsabi na ako eh. Sabi ko bakit may mga resibong ganito?*

COURT-

Ms. Witness, just answer the question asked of you?

ATTY. DULAY-

Q So, Ms. Witness, according to you there was a window dressing?

A Yes, ma'am.

Q **What do you mean by window dressing?**

A Window dressing means, to remit previous payments which should be remitted by Engr. Dejon to update the old payments.

COURT-

Q That were not remitted?

A Yes, that were not remitted, your Honor.

ATTY. DULAY-

Q So, Ms. Witness, when you received new instruction, what did you do, if any?

A I followed the instruction ma'am.

Q So, Ms. Witness, this time under Exhibit "M", the acknowledgment Receipt No. 0673, how much was the money involved here?

A P110,000.00 ma'am.

Q What did you do with the P110,000.00 collection?

A When I found out that some of the previous receipts were not remitted by Engr. Dejon, and from the instruction of Mr. Arnold Reblando to make a window dressing, so what I did was, to remit previous receipts just to update some receipts.

x x x x

Q Why did you have to do that Ms. Witness?

A Because that is the instruction to do that ma'am?

Q Whose instruction?

A From Arnold Reblando ma'am.

Q So, from that date, November 8, 2012, you were already on the monies that you received were applied to monies received by Engr. Dejon not turned over to Dasman Realty?

A Yes, ma'am.⁴³

x x x x

From the foregoing, it can readily be seen that accused-appellant's testimonies were plagued with inconsistencies, which just showed her criminal intent to take the cash collections. Accused-appellant's defenses, *i.e.*, from alleging that she turned-over the payments to Macaldo, next to Engr. Dejon, to merely following instructions to issue acknowledgement receipts instead of official receipts, to *window-dressing*, are all self-serving because they were unsupported by evidence. Accused-appellant was the one tasked to collect the payments from Dasman Realty's clients as in fact she did receive the cash payments as she herself admitted that all the initials in the subject official receipts and acknowledgment receipts are her own initials, yet, there was no proof that said amounts of monies she received were remitted to Dasman Realty. Likewise, the fact that the "taking" was accomplished

⁴³ TSN, March 30, 2015, pp. 30-33.

without the use of violence or intimidation against persons, or force upon things was undisputed. Thus, based on the foregoing circumstances, intent to gain is apparent on the part of the accused-appellant. Intent to gain or *animus lucrandi* is an internal act which can be established through the overt acts of the offender, and is presumed from the proven unlawful taking.⁴⁴ Actual gain is irrelevant as the important consideration is the intent to gain.⁴⁵

Furthermore, the prosecution was able to show that the taking was clearly done with grave abuse of confidence. As OIC-Property Accountant who was tasked, among others, to assist in the collection of the payments being paid by the unit owners and lots,⁴⁶ accused-appellant made use of her position to obtain the payment collections due to Dasman Realty. From the nature of her functions, accused-appellant's position entailed a high degree of confidence reposed by Dasman Realty as she had been granted access to funds collectible from clients. She would not have been able to take the money paid by clients if it were not for her position in Dasman Realty. Such relation of trust and confidence was amply established to have been gravely abused when she failed to remit the entrusted amount of collection to Dasman Realty.

In sum, We find no cogent reason to disturb the above findings of the trial court which were affirmed by the CA and fully supported by the evidence on record. Time and again, the Court has held that the facts found by the trial court, as affirmed *in toto* by the CA, are as a general rule, conclusive upon this Court, in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable. The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial. Absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses.⁴⁷

Proper Penalty

The trial court, as affirmed by the appellate court, ordered accused-appellant to restitute the aggregate amount of One Million Twenty Nine Thousand Eight Hundred Ninety Three Pesos and 33/100 (₱1,029,893.33) which represents the total value of the unremitted payments to Dasman Realty and Development Corporation. The trial court also imposed the single penalty of *reclusion perpetua* for all fourteen (14) counts of qualified theft. However,

⁴⁴ *People of the Philippines v. Jennie Manlao y Laquila*, G.R. No. 234023, September 3, 2018.

⁴⁵ *People v. Mejares*, G.R. No. 225735, January 10, 2018, 850 SCRA 480, 491.

⁴⁶ TSN, March 30, 2015, p. 6.

⁴⁷ *Miranda v. People*, 680 Phil. 126, 134-136 (2012).

with the passage of R.A. No. 10951,⁴⁸ the penalties of some crimes which are dependent on the value of the subject matter of the crimes have been greatly affected, and one of these is theft. The law being more favorable to the accused, in general, the same is given a retroactive effect, and, thus, the need to revisit the computation of penalties.

Moreover, even without applying R.A. No. 10951, we note that the trial court's imposition of a single indivisible penalty for all fourteen (14) counts of qualified theft is improper, as this is not a continuous crime where there are series of acts yet there is only one crime committed, hence, there is only one penalty.⁴⁹ The diversions of accused-appellant of the payments made by Dasman Realty's clients, on fourteen occasions, *i.e.* from September 13, 2011 to January 19, 2013 cannot be considered as proceeding from a single criminal act since the taking were not made at the *same time* and on the *same occasion*, but on *variable dates*. Each occasion of "taking" constitutes a single act with an independent existence and criminal intent of its own. All the "takings" are not the product of a consolidated or united criminal resolution, because each taking is a complete act by itself. Each taking results in a *complete execution* or *consummation* of the delictual act of defalcation.⁵⁰ There is nothing of record to justify that the intention of accused-appellant when she took the collection in September 13, 2011 was the same intention which impelled her to commit the subsequent "takings" on the following months and years until January 19, 2013.⁵¹ Her intent to unlawfully take the cash collections may arise only when she comes in possession of the payments made by individual clients. As a result, there could be as many acts of "taking" as there are times the accused-appellant diverted the payments to her own personal use and benefit. The similarity of pattern resorted to by accused-appellant in making the diversions does not affect the susceptibility of the acts committed to divisible crimes.⁵²

Further, the imposition of a single indivisible penalty of *reclusion perpetua* would lead to confusion considering that there were 14 separate informations against accused-appellant, and she had been in fact convicted on all 14 counts of qualified theft. Consequently, accused-appellant should be sentenced to imprisonment on all 14 counts of qualified theft, under Articles 310, and 309 of the RPC, as amended.

Articles 310 of the RPC, and Article 309 of the RPC, as amended by R.A. No. 10951,⁵³ provide:

⁴⁸ Entitled "An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as 'The Revised Penal Code,' as Amended," approved on August 29, 2017.

⁴⁹ See *Mallari v. People*, 250 Phil. 421 (1988).

⁵⁰ *Gamboa v. Court of Appeals*, 160-A Phil. 962, 971, (1975).

⁵¹ *The People of the Philippines v. Antonio P. Cid*, 66 Phil. 354, 362-363 (1938).

⁵² *Gamboa v. Court of Appeals*, 160-A Phil. 962, 971 (1975).

⁵³ *Id.*

Art. 309. Penalties. - Any person guilty of theft shall be punished by:

"1. The penalty of *prisión 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 *prisión mayor* or *reclusion temporal*, as the case may be.

"2. The penalty of *prisión correccional* in its medium and maximum periods, if the value of the thing stolen is more than Six hundred thousand pesos (₱600,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

"3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000) but does not exceed Six hundred thousand pesos (₱600,000).

"4. *Arresto mayor* in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over Five thousand pesos (₱5,000) but does not exceed Twenty thousand pesos (₱20,000).

"5. *Arresto mayor* to its full extent, if such value is over Five hundred pesos (₱500) but does not exceed Five thousand pesos (₱5,000).

"6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed Five hundred pesos (₱500).

"7. *Arresto menor* or a fine not exceeding Twenty thousand pesos (₱20,000), if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed Five hundred pesos (₱500). If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

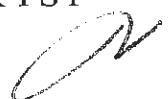
"8. *Arresto menor* in its minimum period or a fine of not exceeding Five thousand pesos (₱5,000), when the value of the thing stolen is not over Five hundred pesos (₱500), and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family."

Art. 310. Qualified theft. - The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article.

Thus, if the value of the property stolen is over Five Thousand Pesos (₱5,000.00) but does not exceed Twenty thousand pesos (₱20,000.00), as in Criminal Case Nos. R-PSY-14-08614-CR and R-PSY-14-08617-CR where the amounts stolen are ₱12,935.00 and ₱17,716.00, respectively, the penalty

under Article 309 (4) of the RPC, as amended, is *arresto mayor* in its medium to *prisión correccional* in its minimum period. However, by virtue of Article 310 of the RPC, qualified theft shall be punished by the penalties next higher by two degrees which is *prisión mayor* in its medium period to *reclusion temporal* in its minimum period which has a prison term of 8 years and 1 day to 14 years and 8 months. There being no aggravating and mitigating circumstances, the range of the penalty that must be imposed as the maximum term should be *prisión mayor* in its medium period to *reclusion temporal* minimum in its medium period, or from 10 years, 2 months and 21 days to 12 years, 5 months and 10 days. Thereafter, applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon accused-appellant is anywhere within the period of *prisión correccional* in its medium period to *prisión mayor* in its minimum period which has a range of 2 years, 4 months and 1 day to 8 years. Accordingly, for Criminal Case No. R-PSY-14-08614-CR and Criminal Case No. R-PSY-14-08617-CR, accused-appellant should be sentenced to suffer the indeterminate penalty of 2 years, 4 months and 1 day of *prisión correccional*, as minimum, to 10 years, 2 months and 21 days of *prisión mayor*, as maximum.

If the amount stolen is more than twenty thousand pesos (₱20,000.00) but does not exceed six hundred thousand pesos (₱600,000.00), as in Criminal Case Nos. R-PSY-14-08615-CR, R-PSY-14-08616-CR, R-PSY-14-08618-CR, R-PSY-14-08619-CR, R-PSY-14-08620-CR, R-PSY-14-08621-CR, R-PSY-14-08622-CR, R-PSY-14-08623-CR, R-PSY-14-08624-CR, R-PSY-14-08625-CR, R-PSY-14-08626-CR, R-PSY-14-08627-CR where the stolen amounts are ₱100,000.00, ₱45,200.00, ₱60,000.00, ₱58,014.00, ₱30,000.00, ₱300,000.00, ₱100,000.00, ₱110,000.00, ₱58,014.00, ₱50,000.00, ₱58,014.00, and ₱30,000.00, respectively, the penalty imposed under Article 309 (3) of the RPC, as amended, is *prisión correccional* in its minimum and medium periods. However, qualified theft shall be punished by the penalties next higher by two degrees which is *prisión mayor* in its medium period and maximum periods which has a prison term of 8 years and 1 day to 12 years. This penalty is composed of only two, not three, periods, in which case, Article 65[4] of the RPC requires the division of the time included in the penalty into three equal portions of time included in the penalty prescribed, forming one period of each of the three portions. Moreover, there being no aggravating and mitigating circumstances, the range of the penalty that must be imposed as the maximum term should be *prisión mayor* in its medium and maximum in its medium period, or 9 years, 4 months and 1 day to 10 years and 8 months. Applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon accused-appellant is anywhere within the period of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period which has a range of 4 years, 2 months and 1 day to 8 years. Accordingly, for Criminal Case Nos. R-PSY-14-08615-CR, R-PSY-



14-08616-CR, R-PSY-14-08618-CR, R-PSY-14-08619-CR, R-PSY-14-08620-CR, R-PSY-14-08621-CR, R-PSY-14-08622-CR, R-PSY-14-08623-CR, R-PSY-14-08624-CR, R-PSY-14-08625-CR, R-PSY-14-08626-CR, R-PSY-14-08627-CR, accused-appellant should be sentenced to suffer the indeterminate penalty of *4 years, 2 months and 1 day of prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.

Following the above computation of penalties, in sum, the penalty corresponding to each count of qualified theft are as follows

Criminal case	Amount unremitted/stolen	Penalties under Art. 309 of the RPC, as amended by RA 10951	Penalties applying Indeterminate Sentence Law
1. Crim. Case. R-PSY-14-08614-CR	₱12,935.00	<i>Arresto mayor</i> in its medium to <i>prisión correccional</i> in its minimum period, if the value of the property stolen is over Five Thousand Pesos (P5,000.00) but does not exceed Twenty thousand pesos (P20,000.00).	2 years, 4 months and 1 day of <i>prisión correccional</i> , as minimum, to 10 years, 2 months and 21 days of <i>prisión mayor</i> , as maximum.
2. Crim. Case. R-PSY-14-08615-CR	₱100,000.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.
3. Crim. Case. R-PSY-14-08616-CR	₱ 45,200.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.
4. Crim. Case. R-PSY-14-08617-CR	₱17,716.00	<i>Arresto mayor</i> in its medium to <i>prisión correccional</i> in its minimum period, if the value of the property stolen is over Five Thousand Pesos (P5,000.00) but does not exceed Twenty thousand pesos (P20,000.00).	2 years, 4 months and 1 day of <i>prisión correccional</i> , as minimum, to 10 years, 2 months and 21 days of <i>prisión mayor</i> , as maximum.
5. Crim. Case. R-PSY-14-08618-CR	₱60,000.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.

		exceed Six hundred thousand pesos (P600,000.00)	
6. Crim. Case. R-PSY-14- 08619-CR	₱58,014.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years, 4 months and one (1) day of <i>prisión mayor</i> , as maximum.
7. Crim. Case. R-PSY-14- 08620-CR	₱30,000.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.
8. Crim. Case. R-PSY-14- 08621-CR	₱300,000.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years and 4 months and 1 day of <i>prisión mayor</i> , as maximum.
9. Crim. Case. R-PSY-14- 08622-CR	₱100,000.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years and 4 months and 1 day of <i>prisión mayor</i> , as maximum.
10. Crim. Case. R-PSY-14- 08623-CR	₱110,000.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, 9 years and 4 months and 1 day of <i>prisión mayor</i> , as maximum.
11. Crim. Case. R-PSY-14- 08624-CR	₱58,014.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.
12.		<i>Prisión correccional</i> in its minimum and medium	4 years, 2 months and 1 day of <i>prisión correccional</i> , as

Crim. Case. R-PS5-14- 08625-CR	₱50,000.00	periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	minimum, to 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.
13. Crim. Case. R-PSY-14- 08626-CR	₱58,014.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.
14. Crim. Case. R-PSY-14- 08627-CR	₱30,000.00	<i>Prisión correccional</i> in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000.00) but does not exceed Six hundred thousand pesos (P600,000.00)	4 years, 2 months and 1 day of <i>prisión correccional</i> , as minimum, to 9 years, 4 months and 1 day of <i>prisión mayor</i> , as maximum.

Considering that accused-appellant was convicted of 14 counts of qualified theft with the corresponding 14 prison sentences, Article 70⁵⁴ of the RPC on successive service of sentences will be observed. Applying said article, despite the 14 counts of qualified theft with corresponding prison sentence for each count, the maximum duration of accused-appellant's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon her, and the maximum period shall in no case exceed forty years. However, it must be emphasized that the application of Article 70⁵⁵ of the RPC should not yet to be taken into account in the court's imposition of the appropriate penalty.⁵⁶ Article 70 speaks of "service" of sentence, "duration" of penalty and penalty "to be inflicted." Nowhere in the article is anything mentioned about the "imposition of penalty." It merely provides that the prisoner cannot be made to serve more than three times the most severe of these penalties the maximum of which is forty years.⁵⁷ Thus, courts should still impose as many penalties as there are separate and distinct offenses committed, since for every individual crime committed, a corresponding penalty is prescribed by law. Each single crime

⁵⁴ Article 70 on Successive Service of Sentence.-

x x x x

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period. Such maximum period shall in no case exceed forty years.

⁵⁵ *Id.*

⁵⁶ See *Mejorada v. Sandiganbayan*, 235 Phil. 400, 410-411 (1987), citing *People v. Escares*, 102 Phil. 677, 679 (1957).

⁵⁷ *Id.*

is an outrage against the State for which the latter, thru the courts of justice, has the power to impose the appropriate penal sanctions.⁵⁸

Also, pursuant to prevailing jurisprudence, the monetary awards due to Dasman Realty shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment. pursuant to prevailing jurisprudence.⁵⁹

On a final note, there seems to be an oversight on the penalty of qualified theft under Article 310 of the RPC where the value to the thing, or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00. The penalty of qualified theft, as earlier discussed, is two (2) degrees higher than that of simple theft under Article 309 of the RPC. Where the value of the thing or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00, the penalty consists of three (3) periods which is *arresto mayor* in its medium period to *prisión correccional* in its minimum period or from two (2) months and twenty one (21) days to four (4) months and ten (10) days. The penalty after applying two (2) degrees higher under Article 310 of the RPC, should likewise consist of three (3) periods in accordance with Article 61 of the RPC on graduation of penalties; hence the penalty becomes *prisión mayor* medium to *reclusion temporal* minimum or from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, if the value of the thing or amount stolen is more than ₱20,000.00 but not exceeding ₱600,000.00, the penalty of simple theft under Article 309 of the RPC consists of two (2) periods which is *prisión correccional* minimum to *prisión correccional* medium or from six (6) months and one (1) day to four (4) years and two (2) months. If simple theft, however, becomes qualified under Article 310 of the RPC, the penalty is two (2) degrees higher but should likewise consist of two (2) periods in accordance with Article 61 of the RPC on graduation of penalties which is *prisión mayor* medium to *prisión mayor* maximum or from eight (8) years and one (1) day to twelve (12) years. It would appear then that where the value of the thing or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00, the maximum penalty is higher than that of the penalty imposed when the value of the things or amount stolen is more than ₱20,000.00 but not exceeding ₱600,000.00. This may have been brought about by the number of periods of the penalties; three (3) periods for the lower amount whereas two (2) periods for the higher amount. A study of the graduated penalties of simple theft in Article 309 of the RPC, however, would show that it is only where the value of the thing or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00, that the penalty consists of three (3) periods, it is, thus, believed that this was merely an overlook. Had the law maintained the penalty to consist of two (2) periods, like the other graduated penalties on simple theft, this could have been avoided. Be that as

⁵⁸ *Id.*

⁵⁹ See *People v. Jugueta*, 783 Phil. 806, 854 (2016).

it may, in view of our Decision in *Corpuz v. People*,⁶⁰ the Court is constrained to apply the law as it is because the Court has no power or authority to alter the penalty as it would encroach on the power of the Congress to legislate laws, to *wit*:

There seems to be a perceived injustice brought about by the range of penalties that the courts continue to impose on crimes against property committed today, based on the amount of damage measured by the value of money eighty years ago in 1932. However, this Court cannot modify the said range of penalties because that would constitute judicial legislation. What the legislature's perceived failure in amending the penalties provided for in the said crimes cannot be remedied through this Court's decisions, as that would be encroaching upon the power of another branch of the government. This, however, does not render the whole situation without any remedy. It can be appropriately presumed that the framers of the Revised Penal Code (RPC) had anticipated this matter by including Article 5, which reads:

ART. 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. - Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.*

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

The first paragraph of the above provision clearly states that for acts borne out of a case which is not punishable by law and the court finds it proper to repress, the remedy is to render the proper decision and thereafter, report to the Chief Executive, through the Department of Justice, the reasons why the same act should be the subject of penal legislation. The premise here is that a deplorable act is present but is not the subject of any penal legislation, thus, the court is tasked to inform the Chief Executive of the need to make that act punishable by law through legislation. The second paragraph is similar to the first except for the situation wherein the act is already punishable by law but the corresponding penalty is deemed by the court as excessive. The remedy therefore, as in the first paragraph is not to suspend the execution of the sentence but to submit to the Chief Executive the reasons why the court considers the said penalty to be non-commensurate with the act committed. Again, the court is tasked to inform the Chief Executive, this time, of the need for a legislation to provide the proper penalty.

In his book, Commentaries on the Revised Penal Code, Guillermo B. Guevara opined that in Article 5, the duty of the court is merely to report to the Chief Executive, with a recommendation for an amendment or modification of the legal provisions which it believes to be harsh. Thus:

This provision is based under the legal maxim "*nullum crimen, nulla poena sine lege*," that is, that there can exist no punishable act except those previously and specifically provided for by penal statute.

No matter how reprehensible an act is, if the law-making body does not deem it necessary to prohibit its perpetration with penal sanction, the Court of justice will be entirely powerless to punish such act.

Under the provisions of this article the Court cannot suspend the execution of a sentence on the ground that the strict enforcement of the provisions of this Code would cause excessive or harsh penalty. All that the Court could do in such eventuality is to report the matter to the Chief Executive with a recommendation for an amendment or modification of the legal provisions which it believes to be harsh.

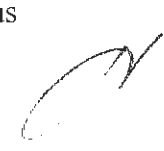
Anent the non-suspension of the execution of the sentence, retired Chief Justice Ramon C. Aquino and retired Associate Justice Carolina C. Griño-Aquino, in their book, The Revised Penal Code,^[21] echoed the above-cited commentary, thus:

The second paragraph of Art. 5 is an application of the humanitarian principle that justice must be tempered with mercy. **Generally, the courts have nothing to do with the wisdom or justness of the penalties fixed by law.** "Whether or not the penalties prescribed by law upon conviction of violations of particular statutes are too severe or are not severe enough, are questions as to which commentators on the law may fairly differ; but **it is the duty of the courts to enforce the will of the legislator in all cases unless it clearly appears that a given penalty falls within the prohibited class of excessive fines or cruel and unusual punishment.**" A petition for clemency should be addressed to the Chief Executive.

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x x x x

One final note, the Court should give Congress a chance to perform its primordial duty of lawmaking. The Court should not pre-empt Congress and usurp its inherent powers of making and enacting laws. While it may be the most expeditious approach, a short cut by judicial *fiat* is a dangerous



proposition, lest the Court dare trespass on prohibited judicial legislation.⁶¹
(Citations omitted; emphasis in the original)

There is therefore a need to *immediately* study the provisions of the law on simple theft under Article 309, in relation to Article 308 of the RPC, because the accused here may be serving a sentence more than what he actually deserved as a punishment considering that the highest penalty imposed on the accused in Criminal Cases Nos. R-PSY-14-08614-CR and R-PSY-14-08617-CR, where the amounts involved are ₱12,935.00 and ₱17,716.00, respectively, is the maximum penalty of ten (10) years, two (2) months and twenty-one (21) days. And, where the accused is convicted for two (2) or more crimes, the convicted accused' maximum duration of imprisonment shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon the convicted accused under Article 70 of the RPC.

Hence, the accused will serve more than thirty (30) years of imprisonment as the maximum period of imprisonment cannot be more than forty (40) years pursuant to Article 70 of the RPC, whereas, in the other crimes for which the accused was convicted and the amounts involved exceed ₱20,000.00, the maximum penalty is nine (9) years and four (4) months, and applying the three-fold penalty rule under Article 70 of the RPC, the imprisonment of the convicted accused would only be a total of less than thirty (30) years. Moreover, under the new law, the Good Conduct Time Allowance (GCTA) of R.A. No. 10592,⁶² the computation of good conduct time allowance is based on the maximum penalty. Again, the convicted accused will be deprived of the full application of the law because the basis of computation of GCTA is the maximum penalty which, in this case, is higher than the penalty which should have been imposed.

It is, thus, strongly recommended to Congress that an immediate rectification be done in order to spare not only the accused here in this case but other accused who are undergoing trial or who are serving their sentences of the same crime of Qualified Theft where the value of the thing or amount stolen is more than Five Thousand Pesos (₱5,000.00) but not exceeding twenty thousand pesos (₱20,000.00).

WHEREFORE, the appeal is **DENIED**. The Decision dated November 3, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08721 finding accused-appellant Yolanda Santos y Parajas, **GUILTY** beyond reasonable doubt of fourteen (14) counts of Qualified Theft, defined and penalized under Article 310, in relation to Article 308 of the Revised Penal

⁶¹ Id. at 397-425.

⁶² An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code, May 29, 2013.



Code, as amended, is hereby **AFFIRMED** with **MODIFICATION** such that Yolanda Santos is sentenced to suffer the penalty of imprisonment enumerated as follows:

(a) In Criminal Case No. R-PSY-14-08614-CR, two (2) years, four (4) months and 1 day of *prisión correccional*, as minimum, to ten (10) years, two (2) months and twenty one (21) days of *prisión mayor*, as maximum.

(b) In Criminal Case No. R-PSY-14-08615-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;

(c) In Criminal Case No. R-PSY-14-08616-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years and four (4) months and one (1) day of *prision mayor*, as maximum;

(d) In Criminal Case No. R-PSY-14-08617-CR, two (2) years, four (4) months and one (1) day of *prisión correccional*, as minimum, to ten (10) years, two (2) months and twenty (21) days of *prision mayor*, as maximum;

(e) In Criminal Case No. R-PSY-14-08618-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum;

(f) In Criminal Case No. R-PSY-14-08619-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum;

(g) In Criminal Case No. R-PSY-14-08620-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and 1 day of *prision mayor*, as maximum;

(h) In Criminal Case No. R-PSY-14-08621-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum;

(i) In Criminal Case No. R-PSY-14-08622-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;




- (j) In Criminal Case No. R-PSY-14-08623-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;
- (k) In Criminal Case No. R-PSY-14-08624-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;
- (l) In Criminal Case No. R-PSY-14-08625-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;
- (m) In Criminal Case No. R-PSY-14-08626-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum.
- (n) In Criminal Case No. R-PSY-14-08627-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum.

The Court further **ORDERS** Yolanda Santos to pay to Dasman Realty and Development Corporation an interest of 6% *per annum* on the aggregate amount of ₱1,029,898.33 to be reckoned from the finality of this judgment until full payment thereof.

Pursuant to Article 5 of the Revised Penal Code, let a Copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice.

Also, let a copy of this Decision be furnished the President of the Senate and the Speaker of the House of Representatives.

SO ORDERED.


DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice



RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice