Supreme Court E-Library

Pesos and Eighty-Five Centavos (₱127,192.85); (c) moral damages in the amount of Eighty Thousand Pesos (₱80,000.00); (d) indemnity for loss of earning capacity in the amount of One Million Pesos (₱1,000,000.00); and (e) temperate damages in the amount of Ten Thousand Pesos (₱10,000.00).

Costs against petitioner.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 168644. February 16, 2010]

BSB GROUP, INC., represented by its President, Mr. RICARDO BANGAYAN, *petitioner vs.* **SALLY GO *a.k.a.* SALLY GO-BANGAYAN,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS.— Theft is present when a person, with intent to gain but without violence against or intimidation of persons or force upon things, takes the personal property of another without the latter's consent. It is qualified when, among others, and as alleged in the instant case, it is committed with abuse of confidence. The prosecution of this offense necessarily focuses on the existence of the following elements: (a) there was taking of personal property belonging to another; (b) the taking was done with intent to gain; (c) the taking was done without the consent of the owner; (d) the taking was done without violence against or intimidation of persons or force upon things; and (e) it was done with abuse of confidence.

Supreme Court E-Library

2. ID.; ID.; THE ALLEGATION OF THEFT OF MONEY NECESSITATES THE PRESENTATION OF EVIDENCE THAT TENDS TO PROVE THE UNLAWFUL TAKING OF MONEY BELONGING TO ANOTHER; CASE AT BAR.— In theft, the act of unlawful taking connotes deprivation of personal property of one by another with intent to gain, and it is immaterial that the offender is able or unable to freely dispose of the property stolen because the deprivation relative to the offended party has already ensued from such act of execution. The allegation of theft of money, hence, necessitates that evidence presented must have a tendency to prove that the offender has unlawfully taken money belonging to another. Interestingly, petitioner has taken pains in attempting to draw a connection between the evidence subject of the instant review, and the allegation of theft in the Information by claiming that respondent had fraudulently deposited the checks in her own name. But this line of argument works more prejudice than favor, because it in effect, seeks to establish the commission, not of theft, but rather of some other crime — probably *estafa*.

3. ID.; ID.; DIFFERENCE BETWEEN CASH AND CHECK IN RELATION TO THE OFFENSE OF ESTAFA BY CONVERSION AND THEFT OF CASH, EXPLAINED.— [T]hat there is no difference between cash and check is true in other instances. In *estafa* by conversion, for instance, whether the thing converted is cash or check, is immaterial in relation to the formal allegation in an information for that offense; a check, after all, while not regarded as legal tender, is normally accepted under commercial usage as a substitute for cash, and the credit it represents in stated monetary value is properly capable of appropriation. And it is in this respect that what the offender does with the check subsequent to the act of unlawfully taking it becomes material inasmuch as this offense is a continuing one. In other words, in pursuing a case for this offense, the prosecution may establish its cause by the presentation of the checks involved. These checks would then constitute the best evidence to establish their contents and to prove the elemental act of conversion in support of the proposition that the offender has indeed indorsed the same in his own name. Theft, however, is not of such character. Thus, for our purposes, as the Information in this case accuses respondent of having stolen cash, proof tending to establish that respondent has actualized her criminal intent by indorsing

Supreme Court E-Library

the checks and depositing the proceeds thereof in her personal account, becomes not only irrelevant but also immaterial and, on that score, inadmissible in evidence.

4. COMMERCIAL LAW; BANK SECRECY ACT OF 1955 (RA 1405); WHAT CONSTITUTES THE SUBJECT-MATTER OF LITIGATION TO VALIDLY CLAIM EXCLUSION FROM THE COVERAGE OF THE CONFIDENTIALITY RULE, EXPLAINED AND APPLIED.— What indeed constitutes the subject matter in litigation in relation to Section 2 of R.A. No. 1405 has been pointedly and amply addressed in *Union Bank of the Philippines v. Court of Appeals*, in which the Court noted that the inquiry into bank deposits allowable under R.A. No. 1405 must be premised on the fact that the money deposited in the account is **itself** the subject of the action. Given this perspective, we deduce that the subject matter of the action in the case at bar is to be determined from the indictment that charges respondent with the offense, and not from the evidence sought by the prosecution to be admitted into the records. In the criminal Information filed with the trial court, respondent, unqualifiedly and in plain language, is charged with qualified theft by abusing petitioner's trust and confidence and stealing cash in the amount of ₱1,534,135.50. The said Information makes no factual allegation that in some material way involves the checks subject of the testimonial and documentary evidence sought to be suppressed. Neither do the allegations in said Information make mention of the supposed bank account in which the funds represented by the checks have allegedly been kept. In other words, it can hardly be inferred from the indictment itself that the Security Bank account is the ostensible subject of the prosecution's inquiry. Without needlessly expanding the scope of what is plainly alleged in the Information, the subject matter of the action in this case is the money amounting to ₱1,534,135.50 alleged to have been stolen by respondent, and not the money equivalent of the checks which are sought to be admitted in evidence.

5. REMEDIAL LAW; EVIDENCE; WHEN THE DOCUMENTARY AND TESTIMONIAL EVIDENCE SOUGHT TO BE ADMITTED ARE CONSIDERED INCOMPETENT AND IRRELEVANT.— It comes clear that the admission of testimonial and documentary evidence relative to respondent's Security Bank account serves no other purpose than to establish the existence of such

Supreme Court E-Library

account, its nature and the amount kept in it. It constitutes an attempt by the prosecution at an impermissible inquiry into a bank deposit account the privacy and confidentiality of which is protected by law. On this score alone, the objection posed by respondent in her motion to suppress should have indeed put an end to the controversy at the very first instance it was raised before the trial court. In sum, we hold that the testimony of Marasigan on the particulars of respondent's supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft. We find full merit in and affirm respondent's objection to the evidence of the prosecution.

APPEARANCES OF COUNSEL

Manalo-Ang & Associates Law Firm for petitioner.
Mauricio Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 87600[1] dated April 20, 2005, which reversed and set aside the September 13, 2004[2] and November 5, 2004[3] Orders issued by the Regional Trial Court of Manila, Branch 36[4] in Criminal Case No. 02-202158 for qualified theft. The

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring, CA *rollo*, pp. 136-145.

[2] Records, Vol. 2, p. 369.

[3] *Id.* at 379-381.

[4] Presided by Judge Wilfredo D. Reyes.

Supreme Court E-Library

said orders, in turn, respectively denied the motion filed by herein respondent Sally Go for the suppression of the testimonial and documentary evidence relative to a Security Bank account, and denied reconsideration.

The basic antecedents are no longer disputed.

Petitioner, the BSB Group, Inc., is a duly organized domestic corporation presided by its herein representative, Ricardo Bangayan (Bangayan). Respondent Sally Go, alternatively referred to as Sally Sia Go and Sally Go-Bangayan, is Bangayan's wife, who was employed in the company as a cashier, and was engaged, among others, to receive and account for the payments made by the various customers of the company.

In 2002, Bangayan filed with the Manila Prosecutor's Office a complaint for *estafa* and/or qualified theft[5] against respondent, alleging that several checks[6] representing the aggregate amount of ₱1,534,135.50 issued by the company's customers in payment of their obligation were, instead of being turned over to the company's coffers, indorsed by respondent who deposited the same to her personal banking account maintained at Security Bank and Trust Company (Security Bank) in Divisoria, Manila Branch.[7] Upon a finding that the evidence adduced was uncontroverted, the assistant city prosecutor recommended the filing of the Information for qualified theft against respondent.[8]

Accordingly, respondent was charged before the Regional Trial Court of Manila, Branch 36, in an Information, the inculpatory portion of which reads:

That in or about or sometime during the period comprised (sic) between January 1988 [and] October 1989, inclusive, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously with intent [to] gain and without the knowledge and consent of the owner thereof, take, steal and carry

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[5] Records, Vol. 1, p. 6.

[6] *Id.* at 12-21.

[7] *Id.* at 6-8.

[8] *Id.* at 3-4.

Supreme Court E-Library

away cash money in the total amount of ₱1,534,135.50 belonging to BSB GROUP OF COMPANIES represented by RICARDO BANGAYAN, to the damage and prejudice of said owner in the aforesaid amount of ₱1,534,135.50, Philippine currency.

That in the commission of the said offense, said accused acted with grave abuse of confidence, being then employed as cashier by said complainant at the time of the commission of the said offense and as such she was entrusted with the said amount of money.

Contrary to law.[9]

Respondent entered a negative plea when arraigned.[10] The trial ensued. On the premise that respondent had allegedly encashed the subject checks and deposited the corresponding amounts thereof to her personal banking account, the prosecution moved for the issuance of subpoena *duces tecum /ad testificandum* against the respective managers or records custodians of Security Bank's Divisoria Branch, as well as of the Asian Savings Bank (now Metropolitan Bank & Trust Co. [Metrobank]), in Jose Abad Santos, Tondo, Manila Branch.[11] The trial court granted the motion and issued the corresponding subpoena.[12]

Respondent filed a motion to quash the subpoena dated November 4, 2003, addressed to Metrobank, noting to the court that in the complaint-affidavit filed with the prosecutor, there was no mention made of the said bank account, to which respondent, in addition to the Security Bank account identified as Account No. 01-14-006, allegedly deposited the proceeds of the supposed checks. Interestingly, while respondent characterized the Metrobank account as irrelevant to the case, she, in the same motion, nevertheless waived her objection to the irrelevancy of the Security Bank account mentioned in the same complaint-affidavit, inasmuch as she was admittedly willing to address the allegations with respect thereto.[13]

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[9] *Supra* note 5, at 1.

[10] *Id.* at 137-138.

[11] *Id.* at 161-162.

[12] *Id.* at 163-164.

[13] *Supra* note 5 at 165-169.

Supreme Court E-Library

Petitioner, opposing respondent's move, argued for the relevancy of the Metrobank account on the ground that the complaint-affidavit showed that there were two checks which respondent allegedly deposited in an account with the said bank.[14] To this, respondent filed a supplemental motion to quash, invoking the absolutely confidential nature of the Metrobank account under the provisions of Republic Act (R.A.) No. 1405.[15] The trial court did not sustain respondent; hence, it denied the motion to quash for lack of merit.[16]

Meanwhile, the prosecution was able to present in court the testimony of Elenita Marasigan (Marasigan), the representative of Security Bank. In a nutshell, Marasigan's testimony sought to prove that between 1988 and 1989, respondent, while engaged as cashier at the BSB Group, Inc., was able to run away with the checks issued to the company by its customers, endorse the same, and credit the corresponding amounts to her personal deposit account with Security Bank. In the course of the testimony, the subject checks were presented to Marasigan for identification and marking as the same checks received by respondent, endorsed, and then deposited in her personal account with Security Bank.[17] But before the testimony could be completed, respondent filed a Motion to Suppress,[18] seeking the exclusion of Marasigan's testimony and accompanying documents thus far received, bearing on the subject Security Bank account. This time respondent invokes, in addition to irrelevancy, the privilege of confidentiality under R.A. No. 1405.

The trial court, nevertheless, denied the motion in its September 13, 2004 Order.[19] A motion for reconsideration was subsequently

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[14] *Id.* at 173-174.

[15] *Id.* at 176-178.

[16] *Id.* at 219-221.

[17] TSN, January 8, 2004, pp. 8-50; TSN, August 20, 2004, pp. 4-65; TSN, September 22, 2004, pp. 27-54.

[18] *Supra* note 2, at 358-359.

[19] *Supra* note 2, at 369.

Supreme Court E-Library

filed, but it was also denied in the Order dated November 5, 2004.[20] These two orders are the subject of the instant case.

Aggrieved, and believing that the trial court gravely abused its discretion in acting the way it did, respondent elevated the matter to the Court of Appeals via a petition for *certiorari* under Rule 65. Finding merit in the petition, the Court of Appeals reversed and set aside the assailed orders of the trial court in its April 20, 2005 Decision.[21] The decision reads:

> WHEREFORE, the petition is hereby GRANTED. The assailed orders dated September 13, 2004 and November 5, 2004 are REVERSED and SET ASIDE. The testimony of the SBTC representative is ordered stricken from the records.
>
> SO ORDERED.[22]

With the denial of its motion for reconsideration,[23] petitioner is now before the Court pleading the same issues as those raised before the lower courts.

In this Petition[24] under Rule 45, petitioner averred in the main that the Court of Appeals had seriously erred in reversing the assailed orders of the trial court, and in effect striking out Marasigan's testimony dealing with respondent's deposit account with Security Bank.[25] It asserted that apart from the fact that the said evidence had a direct relation to the subject matter of the case for qualified theft and, hence, brings the case under one of the exceptions to the coverage of confidentiality under R.A. 1405.[26] Petitioner believed that what constituted the subject matter in litigation was to be determined by the allegations in the information and, in this respect, it alluded to the assailed

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[20] *Id.* at 379-381.

[21] CA *rollo*, pp. 136-145.

[22] *Id.* at 145.

[23] *Id.* at 173.

[24] *Rollo*, pp. 3-30.

[25] *Id.* at 14.

[26] *Id.* at 17-18.

Supreme Court E-Library

November 5, 2004 Order of the trial court, which declared to be erroneous the limitation of the present inquiry merely to what was contained in the information.[27]

For her part, respondent claimed that the money represented by the Security Bank account was neither relevant nor material to the case, because nothing in the criminal information suggested that the money therein deposited was the subject matter of the case. She invited particular attention to that portion of the criminal Information which averred that she has stolen and carried away cash money in the total amount of ₱1,534,135.50. She advanced the notion that the term "cash money" stated in the Information was not synonymous with the checks she was purported to have stolen from petitioner and deposited in her personal banking account. Thus, the checks which the prosecution had Marasigan identify, as well as the testimony itself of Marasigan, should be suppressed by the trial court at least for violating respondent's right to due process.[28] More in point, respondent opined that admitting the testimony of Marasigan, as well as the evidence pertaining to the Security Bank account, would violate the secrecy rule under R.A. No. 1405.[29]

In its reply, petitioner asserted the sufficiency of the allegations in the criminal Information for qualified theft, as the same has sufficiently alleged the elements of the offense charged. It posits that through Marasigan's testimony, the Court would be able to establish that the checks involved, copies of which were attached to the complaint-affidavit filed with the prosecutor, had indeed been received by respondent as cashier, but were, thereafter, deposited by the latter to her personal account with Security Bank. Petitioner held that the checks represented the cash money stolen by respondent and, hence, the subject matter in this case is not only the cash amount represented by the checks supposedly stolen by respondent, but also the checks themselves.[30]

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[27] *Rollo*, p. 20.

[28] *Rollo*, pp. 173-178.

[29] *Rollo*, pp. 179-181.

[30] *Supra* note 24, at 193-210.

Supreme Court E-Library

We derive from the conflicting advocacies of the parties that the issue for resolution is whether the testimony of Marasigan and the accompanying documents are irrelevant to the case, and whether they are also violative of the absolutely confidential nature of bank deposits and, hence, excluded by operation of R.A. No. 1405. The question of admissibility of the evidence thus comes to the fore. And the Court, after deliberative estimation, finds the subject evidence to be indeed inadmissible.

Prefatorily, fundamental is the precept in all criminal prosecutions, that the constitutive acts of the offense must be established with unwavering exactitude and moral certainty because this is the critical and only requisite to a finding of guilt. [31] Theft is present when a person, with intent to gain but without violence against or intimidation of persons or force upon things, takes the personal property of another without the latter's consent. It is qualified when, among others, and as alleged in the instant case, it is committed with abuse of confidence.[32] The prosecution of this offense necessarily focuses on the existence of the following elements: (a) there was taking of personal property belonging to another; (b) the taking was done with intent to gain; (c) the taking was done without the consent of the owner; (d) the taking was done without violence against or intimidation of persons or force upon things; and (e) it was done with abuse of confidence.[33] In turn, whether these elements concur in a way that overcomes the presumption of guiltlessness, is a question that must pass the test of relevancy and competency in accordance with Section 3[34] Rule 128 of the Rules of Court.

Thus, whether these pieces of evidence sought to be suppressed in this case — the testimony of Marasigan, as well as the checks purported to have been stolen and deposited in respondent's

[31] *Catuiran v. People*, G.R. No. 175647, May 8, 2009; and *People v. Obmiranis*, G.R. No. 181492, December 16, 2008.

[32] Reyes, *REVISED PENAL CODE*, Book II, 15th ed., 685, 708-709 (2001).

[33] *Id.* at 686.

[34] Section 3. *Admissibility of evidence.*—Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules.

Supreme Court E-Library

Security Bank account — are relevant, is to be addressed by considering whether they have such direct relation to the fact in issue as to induce belief in its existence or non-existence; or whether they relate collaterally to a fact from which, by process of logic, an inference may be made as to the existence or non-existence of the fact in issue.[35]

The fact in issue appears to be that respondent has taken away cash in the amount of ₱1,534,135.50 from the coffers of petitioner. In support of this allegation, petitioner seeks to establish the existence of the elemental act of taking by adducing evidence that respondent, at several times between 1988 and 1989, deposited some of its checks to her personal account with Security Bank. Petitioner addresses the incongruence between the allegation of theft of cash in the Information, on the one hand, and the evidence that respondent had first stolen the checks and deposited the same in her banking account, on the other hand, by impressing upon the Court that there obtains no difference between cash and check for purposes of prosecuting respondent for theft of cash. Petitioner is mistaken.

In theft, the act of unlawful taking connotes deprivation of personal property of one by another with intent to gain, and it is immaterial that the offender is able or unable to freely dispose of the property stolen because the deprivation relative to the offended party has already ensued from such act of execution.[36] The allegation of theft of money, hence, necessitates that evidence presented must have a tendency to prove that the offender has unlawfully taken money belonging to another. Interestingly, petitioner has taken pains in attempting to draw a connection between the evidence subject of the instant review, and the allegation of theft in the Information by claiming that respondent had fraudulently deposited the checks in her own name. But this line of argument works more prejudice than favor, because

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[35] Sec. 4, Rule 128, Rules of Court; *Fishman v. Consumer's Brewing Co.*, 78 N.J.L. 300, 302, cited in *EVIDENCE RULES* 128-134, R.J. Francisco, 3rd ed., 17 (1996).

[36] *Valenzuela v. People*, G.R. No. 160188, June 21, 2007, 525 SCRA 306, 343.

Supreme Court E-Library

it in effect, seeks to establish the commission, not of theft, but rather of some other crime — probably *estafa*.

Moreover, that there is no difference between cash and check is true in other instances. In *estafa* by conversion, for instance, whether the thing converted is cash or check, is immaterial in relation to the formal allegation in an information for that offense; a check, after all, while not regarded as legal tender, is normally accepted under commercial usage as a substitute for cash, and the credit it represents in stated monetary value is properly capable of appropriation. And it is in this respect that what the offender does with the check subsequent to the act of unlawfully taking it becomes material inasmuch as this offense is a continuing one.[37] In other words, in pursuing a case for this offense, the prosecution may establish its cause by the presentation of the checks involved. These checks would then constitute the best evidence to establish their contents and to prove the elemental act of conversion in support of the proposition that the offender has indeed indorsed the same in his own name.[38]

Theft, however, is not of such character. Thus, for our purposes, as the Information in this case accuses respondent of having stolen cash, proof tending to establish that respondent has actualized her criminal intent by indorsing the checks and depositing the proceeds thereof in her personal account, becomes not only irrelevant but also immaterial and, on that score, inadmissible in evidence.

We now address the issue of whether the admission of Marasigan's testimony on the particulars of respondent's account with Security Bank, as well as of the corresponding evidence of the checks allegedly deposited in said account, constitutes an unallowable inquiry under R.A. 1405.

It is conceded that while the fundamental law has not bothered with the triviality of specifically addressing privacy rights relative to banking accounts, there, nevertheless, exists in our jurisdiction

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[37] *Galvez v. Court of Appeals*, G.R. No. L-22760, November 29, 1971, 42 SCRA 278.

[38] *Id*.

Supreme Court E-Library

a legitimate expectation of privacy governing such accounts. The source of this right of expectation is statutory, and it is found in R.A. No. 1405,[39] otherwise known as the Bank Secrecy Act of 1955. [40]

R.A. No. 1405 has two allied purposes. It hopes to discourage private hoarding and at the same time encourage the people to deposit their money in banking institutions, so that it may be utilized by way of authorized loans and thereby assist in economic development.[41] Owing to this piece of legislation, the confidentiality of bank deposits remains to be a basic state policy in the Philippines.[42] Section 2 of the law institutionalized this policy by characterizing as absolutely confidential in general all deposits of whatever nature with banks and other financial institutions in the country. It declares:

> **Section 2.** All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, *except* upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Subsequent statutory enactments[43] have expanded the list of exceptions to this policy yet the secrecy of bank deposits still lies as the general rule, falling as it does within the legally recognized

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[39] It carries the title "An Act Prohibiting Disclosure of or Inquiry Into Deposits With Any Banking Institution And Providing Penalty Therefor." The law was approved on September 9, 1955.

[40] *Republic v. Eugenio*, G.R. No. 174629, February 14, 2008, 545 SCRA 384, 414.

[41] Section 1, Republic Act No. 1405.

[42] *Id.*

[43] Presidential Decree No. 1972, later on modified by R.A. No. 7653; R.A. No. 3019; R.A. No. 9160.

Supreme Court E-Library

zones of privacy.[44] There is, in fact, much disfavor to construing these primary and supplemental exceptions in a manner that would authorize unbridled discretion, whether governmental or otherwise, in utilizing these exceptions as authority for unwarranted inquiry into bank accounts. It is then perceivable that the present legal order is obliged to conserve the absolutely confidential nature of bank deposits.[45]

The measure of protection afforded by the law has been explained in *China Banking Corporation v. Ortega*.[46] That case principally addressed the issue of whether the prohibition against an examination of bank deposits precludes garnishment in satisfaction of a judgment. Ruling on that issue in the negative, the Court found guidance in the relevant portions of the legislative deliberations on Senate Bill No. 351 and House Bill No. 3977, which later became the Bank Secrecy Act, and it held that the absolute confidentiality rule in R.A. No. 1405 actually aims at protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature, as well as the amount of the deposit in any given bank account. Thus,

> x x x The lower court did not order an examination of or inquiry into the deposit of B&B Forest Development Corporation, as contemplated in the law. It merely required Tan Kim Liong to inform the court whether or not the defendant B&B Forest Development Corporation had a deposit in the China Banking Corporation only for purposes of the garnishment issued by it, so that the bank would hold the same intact and not allow any withdrawal until further order. It will be noted from the discussion of the conference committee report on Senate Bill No. 351 and House Bill No. 3977 which later became Republic Act No. 1405, that it was not the intention of the lawmakers to place banks deposits beyond the reach of execution to satisfy a final judgment. Thus:
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> x x x Mr. Marcos: Now, for purposes of the record, I should like the Chairman of the Committee on Ways and Means

[44] *Supra* note 40.

[45] *Id*.

[46] G.R. No. L-34964, January 31, 1973, 49 SCRA 355.

Supreme Court E-Library

to clarify this further. Suppose an individual has a tax case. He is being held liable by the Bureau of Internal Revenue [(BIR)] or, say, ₱1,000.00 worth of tax liability, and because of this the deposit of this individual [has been] attached by the [BIR].

Mr. Ramos: The attachment will only apply after the court has pronounced sentence declaring the liability of such person. **But where the primary aim is to determine whether he has a bank deposit in order to bring about a proper assessment by the [BIR], such inquiry is not allowed by this proposed law.**

Mr. Marcos: But under our rules of procedure and under the Civil Code, the attachment or garnishment of money deposited is allowed. Let us assume for instance that there is a preliminary attachment which is for garnishment or for holding liable all moneys deposited belonging to a certain individual, but such attachment or garnishment will bring out into the open the value of such deposit. Is that prohibited by... the law?

Mr. Ramos: It is only prohibited to the extent that the inquiry... is made only for the purpose of satisfying a tax liability already declared for the protection of the right in favor of the government; **but when the object is merely to inquire whether he has a deposit or not for purposes of taxation, then this is fully covered by the law.** x x x

Mr. Marcos: **The law prohibits a mere investigation into the existence and the amount of the deposit.**

Mr. Ramos: **Into the very nature of such deposit.** x x x[47]

In taking exclusion from the coverage of the confidentiality rule, petitioner in the instant case posits that the account maintained by respondent with Security Bank contains the proceeds of the checks that she has fraudulently appropriated to herself and, thus, falls under one of the exceptions in Section 2 of R.A. No. 1405 — that the money kept in said account is the subject matter in litigation. To highlight this thesis, petitioner

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[47] *Supra* note 46, at 358-359. The portion of the discussion was lifted from Vol. II, Congressional Record, House of Representatives, No. 12, pp. 3839-3840, July 27, 1955. (Emphasis supplied.)

Supreme Court E-Library

avers, citing *Mathay v. Consolidated Bank and Trust Co.*,[48] that the subject matter of the action refers to the physical facts; the things real or personal; the money, lands, chattels and the like, in relation to which the suit is prosecuted, which in the instant case should refer to the money deposited in the Security Bank account.[49] On the surface, however, it seems that petitioner's theory is valid to a point, yet a deeper treatment tends to show that it has argued quite off-tangentially. This, because, while *Mathay* did explain what the subject matter of an action is, it nevertheless did so only to determine whether the class suit in that case was properly brought to the court.

What indeed constitutes the subject matter in litigation in relation to Section 2 of R.A. No. 1405 has been pointedly and amply addressed in *Union Bank of the Philippines v. Court of Appeals*,[50] in which the Court noted that the inquiry into bank deposits allowable under R.A. No. 1405 must be premised on the fact that the money deposited in the account is **itself** the subject of the action.[51] Given this perspective, we deduce that the subject matter of the action in the case at bar is to be determined from the indictment that charges respondent with the offense, and not from the evidence sought by the prosecution to be admitted into the records. In the criminal Information filed with the trial court, respondent, unqualifiedly and in plain language, is charged with qualified theft by abusing petitioner's trust and confidence and stealing cash in the amount of ₱1,534,135.50. The said Information makes no factual allegation that in some material way involves the checks subject of the testimonial and documentary evidence sought to be suppressed. Neither do the allegations in said Information make mention of the supposed bank account in which the funds represented by the checks have allegedly been kept.

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[48] G.R. No. L-23136, August 26, 1974, 58 SCRA 559.

[49] *Supra* note 47, at 571.

[50] G.R. No. 134699, December 23, 1999, 321 SCRA 563.

[51] *Id.* at 573. (Emphasis supplied.)

Supreme Court E-Library

In other words, it can hardly be inferred from the indictment itself that the Security Bank account is the ostensible subject of the prosecution's inquiry. Without needlessly expanding the scope of what is plainly alleged in the Information, the subject matter of the action in this case is the money amounting to ₱1,534,135.50 alleged to have been stolen by respondent, and not the money equivalent of the checks which are sought to be admitted in evidence. Thus, it is that, which the prosecution is bound to prove with its evidence, and no other.

It comes clear that the admission of testimonial and documentary evidence relative to respondent's Security Bank account serves no other purpose than to establish the existence of such account, its nature and the amount kept in it. It constitutes an attempt by the prosecution at an impermissible inquiry into a bank deposit account the privacy and confidentiality of which is protected by law. On this score alone, the objection posed by respondent in her motion to suppress should have indeed put an end to the controversy at the very first instance it was raised before the trial court.

In sum, we hold that the testimony of Marasigan on the particulars of respondent's supposed bank account with Security Bank and the documentary evidence represented by the checks adduced in support thereof, are not only incompetent for being excluded by operation of R.A. No. 1405. They are likewise irrelevant to the case, inasmuch as they do not appear to have any logical and reasonable connection to the prosecution of respondent for qualified theft. We find full merit in and affirm respondent's objection to the evidence of the prosecution. The Court of Appeals was, therefore, correct in reversing the assailed orders of the trial court.

A final note. In any given jurisdiction where the right of privacy extends its scope to include an individual's financial privacy rights and personal financial matters, there is an intermediate or heightened scrutiny given by courts and legislators to laws infringing such rights.[52] Should there be doubts in

[52] 16B Am Jur 2d $605, pp. 73-74. See citation 83 therein.

Supreme Court E-Library

upholding the absolutely confidential nature of bank deposits against affirming the authority to inquire into such accounts, then such doubts must be resolved in favor of the former. This attitude persists unless congress lifts its finger to reverse the general state policy respecting the absolutely confidential nature of bank deposits.[53]

WHEREFORE, the petition is *DENIED.* The Decision of the Court of Appeals in CA-G.R. SP No. 87600 dated April 20, 2005, reversing the September 13, 2004 and November 5, 2004 Orders of the Regional Trial Court of Manila, Branch 36 in Criminal Case No. 02-202158, is *AFFIRMED.*

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170864. February 16, 2010]

NELSON LAGAZO, *petitioner, vs.* **GERALD B. SORIANO and GALILEO B. SORIANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE COURT MAY CONSIDER ONLY QUESTIONS OF LAW IN RULE 45 PETITIONS; EXCEPTION THERETO, APPLIED.— Ordinarily, in a Petition for Review on *Certiorari*, this Court only considers questions of law, as it is not a trier of facts. However, there are exceptions to this general rule, such as, when the findings of fact of the appellate court are contrary to those of the trial court. Such

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[53] *Supra* note 40.